

MEGAPESCA Lda

FRAMEWORK CONTRACT FISH/2006/20

**SPECIFIC CONVENTION N°21 : EX-POST EVALUATION
OF THE CURRENT PROTOCOL TO THE FISHERIES
PARTNERSHIP AGREEMENT (FPA) BETWEEN THE
EUROPEAN COMMUNITY AND FEDERATED STATES OF
MICRONESIA, AND ANALYSIS OF THE IMPACT OF THE
FUTURE PROTOCOL ON SUSTAINABILITY**

Final Report

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Average exchange rates used (source: fxtop.com)

1 EUR =	2004	2005	2006	2007	2008	2009
USD	1.24	1.24	1.26	1.37	1.47	1.39
JPY	134	137	146	161	152	130
AUD	1.69	1.63	1.67	1.64	1.74	1.77

Abbreviations and Acronyms

Acronym	Name	Acronym	Name
ACP	Africa, Caribbean, Pacific	IEO	Instituto Español de Oceanografía
ADB	Asian Development Bank	IEPA	Interim Economic Partnership Agreement
ALC	Automatic Location Communicator	IMF	International Monetary Fund
c.i.f.	Cost, Insurance and Freight	IUU	Illegal, Unreported and Unregulated
CA	Competent Authority	MCS	Monitoring, Control and Surveillance
CMM	Conservation and Management Measure	MTC	Minimum Terms and Conditions
DWFN	Distant-Water Fishing Nation	PAE	Party Allowable Effort
EDF	European Development Fund	PEFA	Public Expenditure & Financial Accountability
EEZ	Exclusive Economic Zone	PIC	Pacific Island Country
EIB	European Investment Bank	PNA	Parties to the Nauru Agreement
EPA	Economic Partnership Agreement	PNG	Papua New Guinea
EPO	Eastern Pacific Ocean	RFMO	Regional Fisheries Management Organisation
f.o.b.	Free On Board	SPC	Secretariat of the Pacific Community
FAD	Fish Aggregating Device	TAC	Total Allowable Catch
FAO	Food and Agriculture Organisation	TAE	Total Allowable Effort
FFA	Forum Fisheries Agency	UN	United Nations
FPA	Fisheries Partnership Agreement	US	United States of America
FSM	Federated States of Micronesia	VDS	Vessel Day Scheme
GDP	Gross Domestic Product	VMS	Vessel Monitoring System
GSP	Generalised System of Preferences	WCP	Western Central Pacific
IATTC	Inter-American Tropical Tuna Commission	WCPFC	Western Central Pacific Fisheries Commission

SUMMARY

1. The EU and Federated States of Micronesia (FSM) concluded in February 2007 a Fisheries Partnership Agreement for a period of nine years, with a first protocol defining the partnership, the fishing possibilities and the associated conditions for a period of 3 years. The FPA provides for tuna only fishing possibilities available for up to 6 purse seiners and 12 surface longliners. The financial contribution of the EU amounts € 559,000 per year, of which 18% (€ 100,620) is earmarked to support the development and the implementation of a National fisheries policy. The EU contribution is based on a reference tonnage of 8,600 tonnes and does not include an additional envelope for supporting the implementation of a National fishery policy. The reason is that the current protocol was initialled before the 2004 Council conclusions on the reform of EU bilateral agreements. The agreement with FSM is part of a network of three bilateral fishing agreements in the Pacific (with Solomon Islands and Kiribati).
2. FSM is a federation of four States located in the Western Central part of the Pacific Ocean, north of Papua New Guinea. FSM is a group of 607 islands stretching 2,730 km from West to East with a very large EEZ of nearly 3 million km². The total population of FSM stands at about 107,000 with a modest increase rate of 0.3% per annum. An estimated 50% of the population is aged 18 and less.
3. The economic activity of FSM consists primarily of subsistence agriculture and fisheries. The development of other activities is hampered by the remoteness of the country and a lack of adequate facilities. The USA, which gave full independence to FSM under the terms of a treaty called Compact Free Association, provided FSM with around USD 2 billion in grants and service between 1986 and 2001. The Compact was renegotiated in 2003 and foresee decreasing grant contributions until 2023.
4. The GDP of FSM is estimated at USD 240 million with a GDP per capita of USD 2,200. FSM is a lower middle income group according to the UN classification of economies. In an economy dominated by public services, fishing brings an important contributor to the economy. The sector represents around 9% of the GDP. Fishery products are also the major commodity exported from FSM, contributing to lower a significant trade deficit of USD 128 million in 2007. The total Government receipts amounted to USD 145 million in 2007, of which 63% are grants received from USA mostly under the Compact treaty. Fees paid by foreign fishing operators to access the FSM EEZ represented USD 15 million in 2007, 10% of total Government revenues but 28% of revenues excluding grants. Fisheries would provide employment for approximately 700 persons, 5% of the total number of jobs in FSM.
5. FSM are one the 8 ACP States in the Pacific. The country accessed the Cotonou Treaty in 2000 and received support under the successive EDF at both National and Regional level. While the cooperation strategy at National level focus on renewable energy (90% of the € 8.3 million A-envelope under 10th EDF, all project based), the Pacific regional cooperation strategy provides for important contribution to sustainable management of natural resources and environment, with support of several projects aiming at improving the scientific knowledge on tuna stocks, supporting fight against IUU fishing and improving the contribution of fisheries to the national economies. In 2006, the EU decided to strengthen partnership with Pacific Islands. The largest single donor to FSM is the USA under the Compact, with China and Japan as other major international donors.
6. The tuna fishery of the Western Central Pacific Ocean represents more than half of world tuna catches, far ahead the Indian Ocean tuna fishery (25% of world catches), Eastern Pacific Ocean (14%) and Atlantic Ocean (8%). The catch in 2008 broke a new record at more than 2,400,000 tonnes including 74% (approx. 1,780,000 tonnes) caught by the purse seine fleet, 10% (about 230 000 tonnes) by the longline fleet, and the remainder by other fishing fleets. The first sale value of purse seine catch was estimated close to € 2.1 billion in 2008 while longline catch value was about € 950 million. Almost 80% of purse seine catch is taken from the EEZ of the 8 coastal state signatories of the Nauru Agreement, of which FSM, Solomon Islands and Kiribati are party.

7. The purse seine tuna fleet active in the Western Central Pacific Ocean totalled 213 vessels in 2007. The fishery is dominated by interests flying the flag of Japan (35 purse seiners), Taiwan (34 purse seiners) and Korea (28 purse seiners), and a maximum of 40 US purse seiners operating under a multilateral Treaty concluded between the USA and the Pacific Islands. Over these last few years, the Pacific Coastal States have developed an important fishing capacity with 41 purse seiners flagged to Papua New Guinea and 10 flagged to Vanuatu. With 4 active vessels over the last three years, EU purse seiners (Spanish flag) account for less than 1% of total purse seine fishing capacity and catch. The number of active longliners in the Western Central Pacific varies between 4,000 and 5,000 units, flying the flags of Taiwan, China, Korea or Pacific Coastal States. The EU longline fleet includes between 8 and 17 vessels targeting swordfish in the Southern latitudes, but no more than 14 vessels at a time. Catch of the EU longline fleet represents less than 1% of total longline catch but 14% of total reported swordfish catch.
8. The fishing strategy of the EU purse seine fleet comprises exploitation of tuna resources present in both the Eastern Pacific Ocean and in the Western Central Pacific Ocean. Fishing operations are centred on Kiribati where a logistic base has been created. The EU purse seine fleet exploits the waters of the Western Central Pacific when fishing in the Eastern Pacific is not possible (seasonal closures) or when the tuna resource is concentrated in the Western part of the Pacific Ocean as a result of the prevailing environmental conditions (such as La Niña episode in 2007/2008). Fishing operations take place in the high seas, in the EEZ of Coastal States having concluded bilateral agreements with the EU (FSM, Solomon Islands and Kiribati) and in the EEZ of Tuvalu and Nauru where Spanish shipowners have negotiated private access agreements. Catches of the EU purse seine fleet in the Pacific supply predominantly the canneries controlled by Spanish interests in Ecuador but can also be sold to canneries in Thailand or in American Samoa. The EU surface longliners work across all the Pacific Ocean but in southern latitudes far from the FSM EEZ.
9. The most recent evaluations of tuna resource concluded that the skipjack stock, the main target species of purse seiners, is not in an overfished state. Contrary to results of previous evaluations, the yellowfin stock is not overfished as well. However, the bigeye stock is confirmed as being in an overfished state. Scientific advice recommends a 34-50% reduction of fishing effort on this species to maintain the stock within safe limits. The fishing effort reduction objective concerns both purse seine fleets and longline fleets. Although based on incomplete data, the evaluation of the swordfish stock targeted by surface longliners concluded that the stock is not in an overfished state as well.
10. The management and conservation framework of the Western Central Pacific highly migratory fish stocks falls under the competency of the Western Central Pacific Fisheries Commission (WCPFC), a RFMO to which the EU is a contracting party. Coastal states adopt measures for fisheries in the waters under their national jurisdiction. In 2008, the WCPFC adopted a range of major management and conservation measures that includes fishing effort limitations in the high seas and seasonal restrictions on the use of Fish Aggregating Devices (FAD) and a moratorium on fishing in certain high sea pockets. The coastal states parties to the Nauru agreement, which are the most important as far as purse seine fishing is concerned, have adopted a limitation of fishing effort in their EEZ consistent with scientific recommendations, plus a set of restrictive measures in the high sea areas neighbouring their EEZ as additional conditions attached to the fishing licences granted (prohibition of fishing in certain high sea pockets, prohibition of fishing under FAD). Such restrictive measures are compatible with measures adopted by the WCPF Commission. The arrangement implemented by PNA for limiting fishing effort in their EEZs is the Vessel Days Scheme (VDS). This Arrangement operates by establishing an overall limit on the number of days that can be fished by purse seine vessels operating in the EEZs of the Parties to the Palau Arrangement. Importantly, the VDS does not provide for access rights on a flag basis, but allows Coastal States to grant access to purse seine fleets they might choose to select on the basis of their own criteria. The analysis of the management and conservation framework shows that coherent groups of Coastal States can successfully impose regulatory measures on Distant Water Fishing Nations fishing fleets, which are subsequently incorporated in the overall legal framework by the competent RFMO

11. Enforcement of management measures in the national EEZ, including fight against IUU fishing, falls under the competency of FSM Authorities. Control means include VMS, observers onboard fishing vessels, three patrol vessels and occasional external support for aerial surveillance. The Forum Fisheries Agency (FFA) provides a significant technical assistance to its Member States in this domain, notably through the centralised management of an harmonised VMS system, the maintenance of a register of authorised fishing vessels, the coordination of the regional network of observers, and the organisation of joint surveillance operations pooling the control resources of its Member States and that of supporting developed countries (Australia, France, New-Zealand, USA).
12. While responsibility for fisheries management is attributed to the four FSM States in the territorial waters, a State Agency, NORMA, is responsible for the management of oceanic resources from 12-200 miles in the FSM economic zone. Faced with the perspective of decreasing grant revenues from USA, FSM have developed a National Strategic Development Plan for the 2004-2023 period to achieve economic growth and self reliance. The National Strategic Plan includes a specific fisheries component with a series of policy initiatives to further support the development of both coastal and oceanic fisheries. The Strategic Plan for fisheries materialises in a matrix detailing the activities and the expected outputs. The National Strategic Plan also identifies needs for the maritime sector, mostly focusing on the development and the rehabilitation of infrastructures to better serve the needs of the economy.
13. The result at the end of the first three years of the agreement is poor. None of the four vessels of the EU purse seine fleet that applied for a license to fish in the EEZ have been authorised by FSM, resulting *de facto* in no catches made under the agreement. The result of the partnership for implementing a National fisheries policy is equally disappointing, as the two parties never managed to start the dialogue foreseen on fishery policy in the frame of the joint-committee. This unexpected result is linked to difficulties in implementing the administrative provisions of the agreement. The EU transferred to FSM the financial contribution (€ 559,000) due for the first year of the agreement, and the EU shipowners paid to FSM for each of the four applicant purse seiners one year worth of access fees (€ 15,000 plus the side contributions considered by the protocol). Having withheld the fishing licences, FSM can be seen as having an outstanding financial debt towards the EU and the EU shipowners that will need to be settled.
14. Consequently, the first three year period of the agreement with FSM did not produce any results towards the objectives assigned to the EU bilateral fishing agreement policy. Although the agreement was not anticipated to generate significant support to the EU fishing industry as a whole given the limited size of the fishing fleet potentially concerned, it is a missed opportunity to start a sectoral dialogue with a party to the Nauru Agreement that has jurisdiction over one of the most productive EEZ throughout the Western Central Pacific ocean. This failed agreement can even been considered to have produced adverse impacts on the EU purse seine fleet by preventing any legal possibility to access the FSM EEZ. The agreement with FSM has had no impact on the EU surface longline fleet. This fleet operates in the southern temperate waters of the Pacific Ocean far from the FSM EEZ.
15. Nonetheless, it is estimated the both parties have a mutual interest to conclude a new protocol of agreement. The EU purse seine fleet needs to maintain access to the EEZ of FSM in a context of limitation of its fishing rights in the high seas and further restrictions on fishing in the Eastern Pacific for conservation purposes. The interest in a new protocol to the Agreement is also political. The EU which has adopted a new cooperation strategy with Pacific ACP States and which has made strong commitments to combat IUU fishing, needs to keep a framework for sectoral policy dialogue with Coastal States. The continuation of the agreement with FSM is also important under the ambitious objective of preparing a regional fishing agreement with the 8 parties to the Nauru Agreement, according to the possibilities for reform of bilateral fisheries agreements promoted in the Green Paper. The interest for FSM is to secure multiannual budget revenues that will contribute to the country strategy to achieve self-reliance. FSM has also considerable policy development needs in the fisheries sector and in the maritime sector as a whole. However, a resolution adopted by the FSM Congress in 2009 casts doubts on the political willingness of FSM to continue the agreement with the EU on reasonable terms.

16. The continuation of the Fisheries Partnership Agreement policy with Pacific third countries along the lines adopted by the Council, and the preparation of a more ambitious regional fishing agreement both require that the European Commission should mobilise adequate resources. This has not been the case so far for any of the three EU Pacific agreements. A centralised management of these Pacific agreements from the Commission's headquarters is not a viable solution. Even if the Pacific region represents a small proportion of EU payments for bilateral fishing agreements (less than 1%), the Commission should consider the assignment in the Pacific of a dedicated staff in charge of the daily monitoring of the Pacific Agreements, in order to maintain the credibility of its policy in the Pacific as well as in other regions of the world

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RESUME

1. La Communauté européenne et les Etats Fédérés de Micronésie (la Micronésie) ont conclu en février 2007 un accord de partenariat dans le domaine de la pêche (APP) pour une durée de 9 ans, avec un premier protocole définissant le partenariat, les possibilités de pêche et les conditions associées pour une période de 3 ans. L'APP prévoit des possibilités de pêche thonière exclusivement pour un maximum de 6 senneurs et 12 palangriers. La contribution financière de la CE se monte à 559 000 € par an, dont 18% (100 620 €) sont réservés au soutien au développement et à la mise en œuvre d'une politique nationale de pêche. La contribution de la CE est basée sur un tonnage de référence de 8 600 tonnes et n'inclut pas d'enveloppe additionnelle pour le soutien à la mise en œuvre de la politique nationale sectorielle pêche. La raison est que le protocole en cours a été paraphé avant les conclusions de 2004 du Conseil sur la réforme des accords de pêche. L'accord avec la Micronésie est un élément d'un réseau d'accords de pêche bilatéraux dans le Pacifique (avec les Iles Salomon et Kiribati).
2. La Micronésie est une fédération de 4 Etats situés dans la partie centrale occidentale de l'Océan Pacifique au nord de la Papouasie Nouvelle Guinée. La Micronésie forme un groupe de 607 îles s'étalant sur une distance de 2 730 km de l'Est à l'Ouest avec une ZEE très importante de près de 3 millions de km². La population du pays est d'environ 107 000 habitants, avec un taux modeste d'accroissement annuel (0,3%). On estime que 50% de la population est âgée de moins de 18 ans.
3. L'activité économique de la Micronésie consiste essentiellement d'activité agricole et pêche de subsistance. Le développement d'autres activités est gêné par l'éloignement du pays et un manque d'infrastructures adéquates. Les USA qui ont donné l'indépendance à la Micronésie sous les termes d'un Traité nommé Compact Free Association ont apporté à la Micronésie autour de 2 milliards USD en dons et en services entre 1986 et 2001. Le Traité a été renégocié en 2003 et prévoit le don de sommes décroissantes jusqu'en 2023.
4. Le PIB de la Micronésie est estimé à 240 millions USD avec un PIB par habitant de 2 200 USD. La Micronésie est classée par les Nations Unies dans le groupe des pays à revenu moyen bas. Dans une économie dominée par les services publics, le secteur de la pêche apporte une contribution sensible représentant 9% du PIB. Les produits de la pêche représentent également la principale commodité exportée, contribuant à atténuer le déficit sensible de la balance commerciale qui était de 128 millions USD en 2007. Les revenus du Gouvernement se sont montés à 145 millions USD en 2007, dont 63% de dons reçus principalement des USA sous le Traité d'association. Les redevances payées par les opérateurs étrangers de pêche en échange de l'accès à la ZEE du pays représentaient 15 millions USD en 2007, soit 10% du total des revenus du Gouvernement mais 28% des revenus hors dons. La pêche fournirait de l'emploi pour environ 700 personnes, soit 5% du nombre total d'emploi en Micronésie.
5. La Micronésie est l'un des 8 Etats ACP du Pacifique. Le pays a rejoint l'accord de Cotonou en 2000 et a reçu des soutiens de la Communauté sous les différents FED que ce soit au niveau national ou régional. Alors que la stratégie de coopération nationale se concentre sur les énergies renouvelables (90% de l'enveloppe A du 10^{ème} FED, uniquement par projets), la stratégie de coopération régionale avec les Etats ACP du Pacifique intègre une contribution importante à la gestion durable des ressources naturelles et de l'environnement, avec plusieurs projets qui visent à améliorer les connaissances scientifiques sur les stocks thonières, à soutenir la lutte contre la pêche INN et améliorer la contribution de la pêche aux économies nationales. En 2006, la CE a décidé de renforcer son partenariat avec les îles du Pacifique. Le principal bailleur de la Micronésie est les USA, avec la Chine et le Japon comme autre donneurs importants.
6. La pêcherie thonière de l'Océan Pacifique Central représente plus de la moitié des captures mondiales de thonidés, loin devant l'Océan Indien (25% des captures mondiales), le Pacifique Oriental (14%) et l'Océan Atlantique (8%). Les captures en 2008 ont constitué un nouveau record avec plus de 2 400 000 tonnes pêchées, dont 74% (environ 1 780 000 tonnes) capturé par la flotte des senneurs, 10% (230 000 tonnes) par la flotte des palangriers, et le reste par

d'autres types d'engins. La valeur au débarquement des captures des senneurs est estimée proche de 2,1 milliards € en 2008, contre 950 millions € pour les captures des palangriers. Environ 80% des captures des senneurs proviennent des ZEE des Etats côtiers signataires de l'accord de Nauru, dont la Micronésie, les Iles Salomon et le Kiribati sont parties.

7. La flotte des senneurs actifs dans l'Océan Pacifique Central Occidental comprenait 213 unités en 2007. La flotte est dominée par des intérêts battant le pavillon du Japon (35 unités), de Taiwan (34 unités) et de Corée (28 unités) avec un maximum de 40 senneurs des USA opérant sous couvert d'un Traité multilatéral conclu entre les USA et les îles du Pacifique. Au cours de ces dernières années, les Etats du Pacifique ont développé des capacités de pêche importantes avec 41 senneurs battant pavillon de la Papouasie Nouvelle Guinée et 10 du Vanuatu. Avec 4 senneurs actifs sur ces trois dernières années, les senneurs communautaires (tous de l'Espagne) compte pour moins de 1% de la flotte et des captures totales. Le nombre de palangriers actifs dans le Pacifique varie entre 4 000 et 5 000 unités battant les pavillons de Taiwan, Chine, Corée ou des Etats du Pacifique. La flotte des palangriers communautaires comprend entre 8 et 17 navires ciblant l'espadon dans les latitudes australes, sans dépasser 14 simultanément. Les captures de la flotte palangrière CE représentent moins de 1% du total, mais 14% des captures déclarées d'espadon.
8. La stratégie de pêche des senneurs CE dans le Pacifique intègre l'exploitation des ressources présentes dans les parties orientales et occidentales du Pacifique. Les opérations de pêche sont centrées autour du Kiribati où une base logistique a été créée. La flotte de pêche de la CE est présente dans les eaux du Pacifique Central Occidental quand la pêche dans le Pacifique Oriental n'est pas possible (fermetures saisonnières) ou quand la ressource se concentre dans la partie occidentale de l'Océan du fait de conditions environnementales spécifiques (comme l'épisode La Niña en 2007/2008). Les opérations de pêche de la flotte se déroulent en Haute Mer, dans les eaux d'Etats côtiers avec qui la CE a conclu des accords de pêche (Micronésie, Iles Salomon et Kiribati) et dans les ZEE de Tuvalu et de Nauru par le biais d'accords privés négociés par les armateurs. Les captures de la flotte CE approvisionnement principalement les conserveries en Equateur contrôlées par des intérêts espagnols, mais peuvent aussi être vendues en Thaïlande ou aux Samoa Américaines. Les palangriers de surface de la CE travaillent sur toute la largeur du Pacifique, mais dans les latitudes sud loin de la ZEE de la Micronésie.
9. Les évaluations de stock les plus récentes ont conclu que le stock de listao, la principale espèce pêchée par les senneurs, n'est pas surpêché. Contrairement au résultat d'évaluations précédentes, le stock d'albacore ne serait pas menacé également. Cependant, le stock de patudo est confirmé comme étant surexploité. Les avis scientifiques recommandent une diminution de l'effort sur cette espèce de 34 à 50% pour espérer maintenir le stock dans des limites biologiques viables. L'objectif de réduction de l'effort concerne à la fois les senneurs et les palangriers. Bien que basée sur des données incomplètes, l'évaluation du stock d'espadon conclut sur un état satisfaisant.
10. Le régime de gestion et de conservation des stocks d'espèces hautement migratoires de l'Océan Pacifique Central et Occidental repose d'une part sur la *Western Central Pacific Fisheries Commission* (WCPFC), une ORGP dont la CE est partie contractante, et d'autre part sur les mesures adoptées par les pays côtiers pour ce qui concerne les pêcheries dans les zones sous juridiction. La WCPFC a adopté en 2008 un ensemble important de mesures de conservation et de gestion qui intègrent une limitation de l'effort de pêche des senneurs dans les zones de haute mer plus des restrictions saisonnières portant sur l'utilisation de dispositifs de concentration des poissons (DCP) et un moratoire sur la pêche en haute mer. Les pays côtiers les plus importants pour la pêche à la senne, soit les pays signataires de l'accord de Nauru dont font partie la Micronésie, ont adopté le principe d'un gel du niveau de l'effort de pêche à des niveaux compatibles avec les avis scientifiques, plus des restrictions dans des zones de haute mer adjacentes à leurs ZEE comme conditions additionnelles à l'obtention de licences de pêche dans leurs zones (interdiction de pêche dans certaines zones de haute mer, interdiction de pêche sous DCP). Le mécanisme mis en œuvre par ces pays côtiers pour limiter l'effort est celui du *Vessel Days Scheme* (VDS) qui fixe un maximum de nombre de jours de pêche que pourront utiliser les flottes de senneurs dans les ZEE des pays signataires de l'accord de Nauru, et qui répartit ce nombre maximum entre les parties à l'accord. Elément

important, le VDS n'intègre plus de droits d'accès sur la base du pavillon du navire, mais autorise les pays côtiers à allouer les jours de pêche aux flottes qu'ils choisissent de privilégier en fonction de leurs propres critères. L'analyse du régime de gestion et de conservation des pêcheries montre que les pays côtiers du Pacifique regroupés en un ensemble cohérent arrivent à imposer des règles contraignantes aux flottes de pêche lointaines et qui sont ensuite reprises par l'ORGP compétente

11. Le contrôle du respect des mesures de gestion, y compris la lutte contre la pêche INN, dans la ZEE nationale est de la responsabilité des autorités des Iles Salomon qui disposent de quelques moyens de contrôle (VMS, observateurs embarqués ainsi que trois patrouilleurs plus appuis ponctuels extérieurs). Le *Forum Fisheries Agency* (FFA) apportent une assistance technique importante à ses Etats membres dans ce domaine notamment par la gestion d'un système de VMS harmonisé, le maintien d'un registre centralisé des navires autorisés, la coordination du réseau d'observateurs embarqués et l'organisation d'opérations de surveillance conjointes mettant en commun les moyens des Etats membres du FFA plus ceux apportés par des pays développés (Australie, France, Nouvelle-Zélande, USA)
12. Alors que la responsabilité du secteur de la pêche revient aux quatre Etats formant la Micronésie pour les eaux territoriales, une agence gouvernementale, la NORMA, est responsable de la gestion des ressources océaniques pour la zone des 12-200 milles de la ZEE. Devant la perspective de dons décroissant des USA, la Micronésie a adopté un plan stratégique de développement national de manière à atteindre la croissance et l'autonomie financière. Le plan stratégique national comprend un volet spécifique sectoriel pêche avec une série d'initiatives politiques destinée à soutenir davantage le développement des pêches côtières et hauturières. Le plan stratégique inclut une matrice détaillant les activités à conduire et les résultats attendus. Le plan stratégique national comprend également un volet maritime se concentrant principalement sur le développement et la réhabilitation d'infrastructures destinées à soutenir le développement économique.
13. Concernant l'accord, le résultat au bout de 3 années est faible. Aucun des 4 senneurs de la CE qui ont demandé des licences de pêche pour pêcher dans la ZEE n'ont reçu les autorisations de la Micronésie, résultant *de facto* en une capture nulle. Le résultat du partenariat pour mettre en œuvre une politique des pêches est tout aussi décevant, les deux parties n'ayant jamais réussi à démarrer le dialogue sectoriel prévu dans le cadre des réunions de la commission mixte. La CE a payé à la Micronésie la contribution due pour la première année (559 000 €), et les armateurs européens ont payé l'équivalent de la valeur d'une année de redevance pour les licences (15 000 € plus les contributions annexes prévues par le protocole). N'ayant pas délivré les licences, la Micronésie peut être considérée comme ayant une dette envers la CE et les armateurs européens, qui devra être réglée.
14. Par conséquent, les trois premières années de l'accord avec la Micronésie n'ont produit aucune contribution envers les objectifs assignés à la politique des accords de pêche. Bien que l'accord ne pouvait être attendu comme générateur d'une contribution au secteur de la pêche européen en raison de la taille limitée de la flotte potentiellement concernée, cet accord est une opportunité manquée de commencer un dialogue sectoriel avec une des parties de l'accord de Nauru qui détient la juridiction sur l'une des ZEE les plus productives de l'Océan Pacifique Central Occidental. Cet accord manqué peut même être estimé avoir eu des impacts négatifs sur la flotte des senneurs CE en bloquant toute possibilité légale d'accéder à la ZEE de la Micronésie. L'accord n'a eu aucun impact sur la flotte des palangriers de surface de la CE qui travaille dans les eaux tempérées australes, loin de la ZEE de la Micronésie.
15. Néanmoins, il est estimé que les deux parties ont un intérêt mutuel pour conclure un nouveau protocole d'accord. La flotte des senneurs de la CE a besoin de conserver une possibilité d'accès à la ZEE de la Micronésie dans un contexte de limitation de ses droits de pêche en Haute Mer et de nouvelles restrictions sur la pêche dans le Pacifique Oriental motivées par des exigences en matière de conservation. L'intérêt d'un nouveau protocole est également politique. La CE qui a adopté une nouvelle stratégie de coopération avec les Etats ACP du Pacifique et qui s'est engagée dans la lutte contre la pêche INN, a besoin de conserver un cadre de dialogue sectoriel avec les Etats côtiers. Conserver un accord avec la Micronésie est aussi important sous un objectif plus ambitieux de préparer un accord de pêche régional avec

les 8 parties à l'accord de Nauru suivant les possibilités de réforme du volet extérieur de la PCP promues dans le Livre Vert. L'intérêt de la Micronésie est de sécuriser des ressources budgétaires pluriannuelles qui contribueront à la stratégie Nationale pour atteindre l'autonomie financière. La Micronésie a également des besoins importants de développement de son secteur de la pêche, comme du secteur maritime. Cependant, une résolution adoptée par le Congrès de Micronésie en 2009 jette des doutes sur la volonté politique du pays de continuer sa relation pêche avec la CE sous des termes raisonnables.

16. La continuation de la politique des accords de partenariat dans le domaine de la pêche dans le Pacifique suivant les lignes directrices adoptées par le Conseil, ainsi que la préparation d'un accord régional plus ambitieux, demande à ce que la Commission puisse mobiliser des ressources suffisantes. Cela n'a pas été le cas jusqu'à présent pour aucun des accords Pacifique. La gestion centralisée de ces accords à Bruxelles n'est pas une solution viable. Même si la région du Pacifique ne représente qu'une petite part des engagements budgétaires sous la ligne des accords bilatéraux (moins de 1%), la Commission devrait considérer le détachement dans la région Pacifique d'un agent spécialisé en charge de la gestion quotidienne de ces accords de manière à maintenir la crédibilité de sa politique dans le Pacifique comme dans d'autres régions dans le monde.

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INTRODUCTION

In May 2004, the EU and Federated States of Micronesia (FSM) Authorities initialled the first ever fishing agreement between the two parties. The Fisheries Partnership Agreement¹ eventually entered into force on 26 February 2007 upon completion of the ratification procedures². The FPA has been signed for a period of nine years and renewable for additional periods of three years. The current protocol attached to the FPA and setting out fishing possibilities and payments was concluded for a period of three years and is set to expire on 25 February 2010.

This Agreement provides tuna only fishing possibilities for EU vessels fishing in the waters of the FSM. It includes fishing possibilities for up to 6 purse seiners and 12 surface longliners in the EEZ of FSM. Although the protocol considered a possible increase of the number of fishing licences for purse seine vessels from the second year of the protocol, the fishing possibilities have remained identical. Reg (EU) 805/2006³ disposes that the fishing possibilities negotiated can be used by Spain (75% of fishing possibilities available) and France (25%) for the purse seine segment, and by Spain (8 vessels) and Portugal (4 vessels) for the surface longline segment. In practice, only Spanish vessels applied for licences for purse seiners, using the fishing possibilities attributed to France.

The Agreement also establishes a framework for partnership between the two parties with a view to implementing a fisheries policy in the FSM waters and identifying the appropriate means to implement it, according to the EU policy to move from access agreements to Partnership Agreements aiming to strengthen the conditions to achieve sustainable fisheries.

The EU financial contribution amounts at € 559,000 per year including 18% (€ 100,620) devoted to financial support to the implementation of the multi-annual sectoral programme supporting the partnership presented above. The contribution is based on a reference tonnage of 8,600 tonnes valued at € 65 per tonne like under all other tuna fishing agreements concluded by the EU. Having been initialled before the 2004 Council conclusions on the proposed 2002 reform of bilateral access agreements, the financial contribution could not include a specific additional envelope to be used for the promotion of sustainable and responsible fishing in FSM waters.

The Fisheries Partnership Agreement with FSM is part of a network of three tuna agreements with other ACP coastal States in the Pacific Ocean. The first agreement in the Pacific region with Kiribati started in 2003 and was renewed in 2006 in response to a need expressed by EU tuna operators to deploy fishing operations in what remains the most productive tuna fishing ground in the World. It was followed by the agreement with Solomon Islands (entered into force in 2006 and provisionally extended up to 2012) and Federated States of Micronesia (entered into force in 2007 and evaluated here).

The fishing agreement with FSM is one of the 15 Community fishing agreement involving a financial contribution in force as of January 2010. It represents a small share (0.3%) of the total EU budgetary commitments for bilateral fishing agreements (~ € 160 million per year). Cumulatively, the three fishing agreements with Pacific ACP States total less than 1% of the EU budget for bilateral agreement

The purpose of this evaluation study is to provide the European Commission with the data and technical analyses needed to prepare the negotiation of a new protocol of Fisheries Partnership Agreement (FPA) between the Community and FSM. Findings from this report can also be used to evaluate the Community policy with regard to this Agreement and to provide a basis for possible future negotiations.

This final report presents information collected from various sources, including the European Commission and the professional association grouping EU shipowners concerned by the utilisation of

¹ OJEC L 151 of 6.6.2006 p.3

² OJEC L 115 of 3.5.2007 p.28

³ OJEC L 151 of 6.6.2006 p.1

fishing possibilities. Due to time constraints, it has not been possible to travel to FSM to meet the National stakeholders.

1. GENERAL BACKGROUND

1.1. Geography

The Federated States of Micronesia (FSM) is a group of 607 small islands (part of the Caroline Islands chain) of which about 65 of the islands are inhabited. FSM consists of four States: Pohnpei, Chuuk (formerly Truk), Yap and Kosrae. While the country's total land area amounts to only 700 km², its EEZ occupies nearly 3 million km² of the Pacific Ocean, and ranges 2,730 km from East (Kosrae) to West (Yap). Each of the four States centres around one or more "high islands," and all but Kosrae include numerous atolls

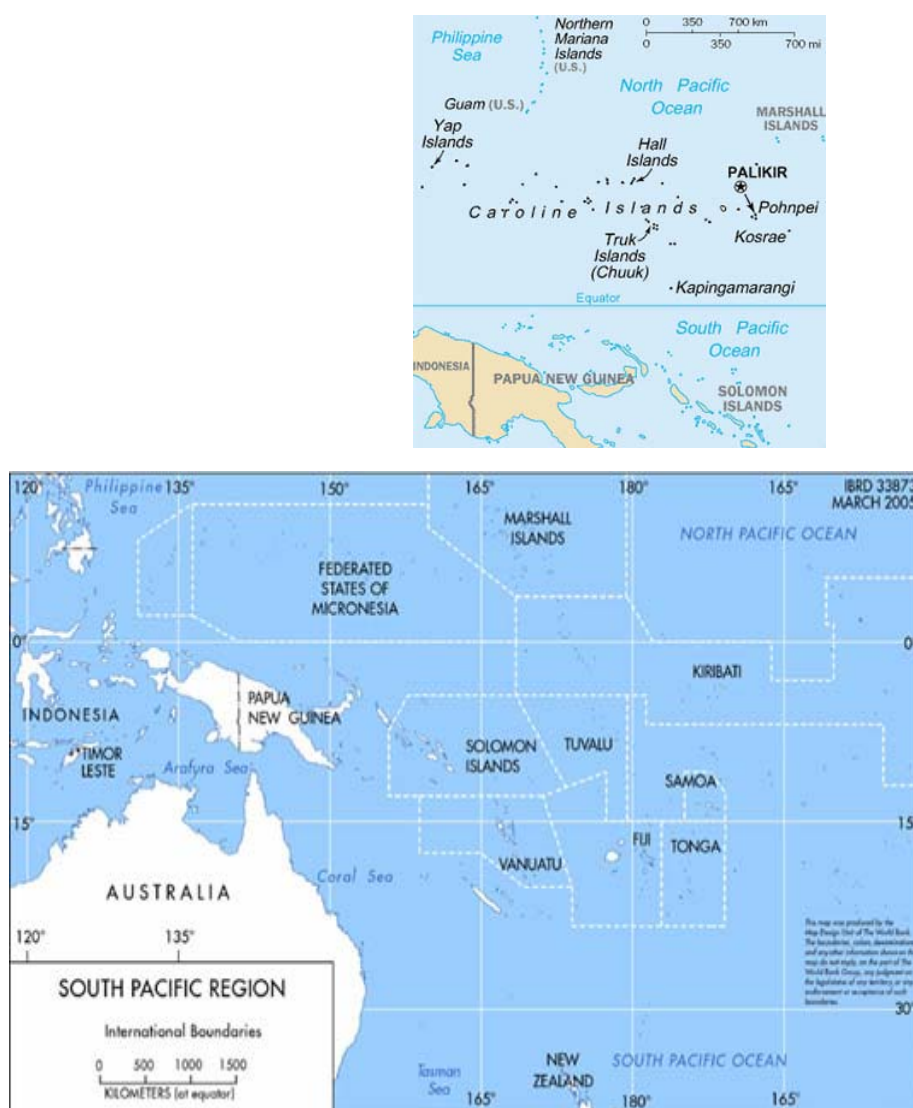


Figure 1: Maps showing the location of Federated States of Micronesia

FSM enjoys a tropical climate, with relatively even, warm temperatures throughout the year. Rainfall is generally plentiful, and Pohnpei reputedly is one of the wettest places on Earth, with up to 8.3 m of rain per year. Nevertheless, drought conditions do occur periodically throughout FSM, especially when the El Niño conditions occur. At these times groundwater supplies have dwindled to emergency proportions. Tropical typhoons constitute an annual threat, particularly to the low-lying atolls.

1.2. Population

By the most recent count (2000) the total population of FSM stands at about 107,000, an increase of about 24,000 since the 1980 census. The projected population growth rate is currently of 0.3% per annum. FSM populations ranks 184th out of 207 countries in the world. The State of Chuuk accounts for roughly half the total, at about 53,500. Pohnpei is next at about 34,500. The State of Yap has about 11,200 people, and Kosrae has a population of about 7,700. An estimated 50% of the population is aged 18 and less.

Since a specific agreement with USA (the Compact of Free Association) permits FSM citizens to enter the USA freely, to maintain "habitual residence" and to pursue education and employment, upwards of 15,000 Micronesians are currently living in the USA - 7,000 in Guam, 3,000 in Northern Mariana Islands, and the rest in Hawaii or on the Mainland. The numbers who actually emigrate to the USA, however, remains relatively low as most FSM citizens eventually return to FSM.

1.3. Macro-economic situation of FSM

1.3.1. General situation and outlook

The economic activity of the Federated States of Micronesia consists primarily of subsistence agriculture and fishing. The islands have few mineral deposits worth exploiting, except for high-grade phosphate. The potential for a tourist industry exists, but the remoteness of the location and a lack of adequate facilities hinder development. Geographical isolation and a poorly developed infrastructure are major impediments to long-term growth.

Under the terms of the Compact of Free Association, the United States provided FSM with around USD 2 billion in grants and services from 1986 to 2001. In 2001 the U.S. provided more than USD 84 million in Compact grants - an amount equivalent to over one-third of FSM's GDP - plus more than USD20 million through other Federal programs.

Negotiations regarding amendments to the USA Compact of Free Association, which focused primarily on the financial provisions, were completed in May 2003. After review and approval by the respective legislatures, the amended Compact was formally ratified in June 2004. Under the terms of Compact II, budgetary transfers until 2023 are replaced by sector grants designated for specific purposes jointly agreed upon by the two governments. Six sector grants are specified: (1) Health, (2) Education, (3) Infrastructure, (4) Capacity Building, (5) Private Sector Development, and (6) Environment. In the new Compact, the real value of annual grant assistance is substantially lower than at the end of Compact I. The assistance package includes an annual US contribution to a jointly managed trust fund, the earnings from which are intended to replace annual grant assistance beginning in 2023, the end of Compact II. The annual grant amount under the new agreement, before inflationary adjustment, is USD 76 million for the initial years (fiscal 2004-2006). Beginning in 2007, the annual grant amount will decline by USD 800,000 annually. This amount will be added to the annual trust fund contribution.

The FSM economy is dominated by the public sector, which is largely funded by sector grants under the USA Compact of Free Association. Despite significant levels of development assistance, the FSM gross domestic product contracted by 0.1% over 2000–2007. It is estimated to have contracted a further 0.5% in 2008 before rebounding slightly with positive growth expected in 2009 on the back of large public sector infrastructure investments. The major long-term challenges to poverty reduction stem from a need to move toward self-sustainability; reduce the country's reliance on foreign assistance; and increase government revenue. The steady decline in grant aid and conditions placed on expenditure of USA funds makes it imperative for national and state governments to reduce expenditure and increase revenue. Improvements in basic social services continue to be crucial. Private sector-driven, sustainable economic growth and good public sector governance are keys to long-term development.

The USD is the FSM's legal currency.

1.3.2. The contribution of fisheries to the national economy

➤ GDP

The total GDP of FSM is estimated at USD 240 million (2007), with GDP per capita of USD 2,200 per capita. According to the UN classification of economies, FSM is in the lower middle income group.

The following table shows the current IMF / FSM estimates of the consolidated National GDP. In the end of the 90's, the FSM Government estimated that fishing represents slightly less than 5% of the National GDP. A study sponsored by the ADB revisited this estimate and concluded that the contribution of the fisheries sector would be twice as much, i.e. 9% of the National GDP. The difference between the two estimates stems from inclusion of subsistence fisheries in the ABD re-estimate.

Table 1: GDP of Federated States of Micronesia. Source IMF Country report 09/81 March 2009

In USD million	2003	2004	2005	2006	2007
Productive enterprises	82.0	80.4	80.7	80.9	83.3
Private sector	64.0	63.4	64.2	65.0	67.6
Public enterprises	18.0	17.0	16.5	16.0	15.7
Financial enterprises	4.3	4.8	5.5	6.4	8.5
Government	69.8	68.5	70.5	72.8	68.7
NGOs	2.5	2.7	2.8	2.8	2.9
Households	54.9	54.2	57.5	60.7	63.2
Subsistence	33.3	32.4	34.6	36.9	38.4
Home ownership	21.5	21.9	22.9	23.9	24.7
Indirect taxes	19.1	18.5	21.1	21.7	21.0
Less bank service charge	-4.8	-4.9	-6.1	-7.2	-9.6
Nominal GDP	227.7	224.1	232.1	238.3	238.1

➤ External trade

FSM Trade balance is negative. Fish products represent almost all the value of exports from FSM. They include mostly tuna products exported principally to Japan and the USA (fresh and frozen yellowfin and bigeye caught by longliners and exported on the Japanese sashimi market). Imports originate mostly from the USA, China, Japan and Australia and include all types of consumer goods.

Table 2: Balance of Trade of FSM. Source: IMF Country report 09/81 March 2009

In USD million	2003	2004	2005	2006	2007
Export f.o.b.	23.8	24.0	17.0	18.5	17.0
Import c.i.f.	-111.5	-120.2	-137.3	-140.7	-145.9
incl. Petroleum	-14.9	-14.4	-17.2	-21.7	-27.0
Balance	-87.7	-96.2	-120.3	-122.2	-128.9

There is no trade of any good or service between the EU and FSM as revealed by COMEXT trade statistics between 2006 and 2008. Concerning fisheries products, FSM are not on the SANCO list of countries authorised to export to the EU. Additionally, FSM are not party to the interim Pacific IEPA initialled so far only by PNG and Fiji. As a middle income country, FSM is eligible to the regular GSP trade regime.

➤ Government revenues

The consolidated general Government finance as estimated by the IMF indicates that in total, receipts by the Government amounted to USD 145 million in 2007. Grants, mostly from the USA under the Compact agreement (Compact I & II), represent more than 63% of total Government revenue. IMF estimates of fees paid by foreign fishing nations in exchange for access to fishing grounds are in the region of USD 15 million, 10% of total Government revenue, but 28% of revenue excluding grants from abroad.

Table 3: Central Government revenue (in USD million). Source: IMF Country report 09/81 March 2009

In USD million	2003	2004	2005	2006	2007
Total revenue and grants	170.4	133.6	135.9	139.7	145.2
Total revenue	48.4	59.8	52.1	54.9	52.8
Tax revenue	24.1	27.3	29.2	29.7	27.8
Non-Tax revenue	24.3	32.5	22.9	25.2	24.9
<i>Fishing access</i>	11.8	12.1	13.3	13.2	15
Total grants	122.1	73.9	83.9	84.8	92.5
Compact general	47.7	0	0	0	0
Compact special	18.7	52.1	56	59.3	60.6

The fisheries partnership agreement between the EU and FSM generates alone minimum revenue of € 559,000 per year (USD 810,000), equivalent to a modest 1.5% of total Government revenue in 2007, not including grants but 5% of fees paid by DWFNs for access to the tuna resource present in the FSM EEZ.

➤ Employment

According to FSM estimates, the total number of persons employed in FSM was 16,400 in 2007, of which 7,230 were employed in the public sector (44%). There is no detailed statistics on employment in the fisheries sector as fishing remains an informal activity for subsistence purpose. A study sponsored by ADB ended up on an estimate of nearly 700 persons employed in the tuna sector.

➤ Food supply

According to FAO statistics (2003), fish consumption in Micronesia is 47.6 kg / caput. Fish is an important component of the diet as it is estimated to cover 40.6% of animal proteins consumption and 22.8% of total protein consumption. Most fisheries products consumed in FSM are derived from artisanal and subsistence fishing. Tuna caught by the industrial fleets in the waters of FSM are traded on developed country markets

1.4. Relations with the European Community and other International Donors

1.4.1. The EU cooperation strategy with FSM and the Pacific Region

➤ Outline of the EU cooperation strategy

The EU relations with the Pacific ACP countries are structured, and have been so for decades, first on the basis of the Lome Conventions, and now by the Cotonou Agreement. In political terms an important objective for the EU has been to underpin a successful stabilisation following decolonisation while supporting economic and social progress. Considering the political volatility experienced in a number of Pacific ACP countries, the Commission considers that this goal has not yet been convincingly attained. Research and evaluations indicate that the EU development assistance has had a positive impact in the region and that without it, growth would have been lower and social indicators poorer. However, analyses indicate that in the last decade overall economic growth remained sluggish on average and insufficient to reduce poverty.

In 2006, the Commission tabled a proposal for a strengthened partnership with the Pacific Islands (document COM (2006) 248) further adopted by the Council. The strategy proposed consists of three components:

- A strengthened relationship between the EU and ACP Pacific States and region to pursue a broad political dialogue mostly with and through the Pacific Islands Forum, but also at national level with key Pacific ACP countries in accordance with the provisions of the Cotonou Agreement
- More focused development action on three priorities: governance, regional integration and sustainable management of natural resources. Part of the latest, fisheries is seen as a sector with great potential for cooperation, including promotion of sustainable utilisation of resources and of good governance practices.
- More efficient aid delivery: facilitation of donor coordination, a more efficient and effective cooperation with the smallest countries, and increased use of budget support are the three axis identified by the Commission. Concerning budget support, virtually not used so far, the Commission wishes to proactively support Pacific States in meeting EuropeAid eligibility criteria⁴. As a contribution to meeting these eligibility criteria, the EU led PEFA assessments of four ACP countries of the region, namely Timor-Leste, Samoa, Vanuatu and Solomon Islands (published Nov. 2008).

In a resolution adopted in Feb. 2007 (document P6_TA (2007) 0022), the European Parliament welcomed the initiative of the Commission to develop the first EU integrated strategy for the Pacific after 30 years of cooperation. The EP emphasises the potential positive role of fisheries in the development of the Pacific Islands and supports the initiative of the Commission to support MCS and fight against IUU fishing. Interestingly, the EP encourages the Commission to negotiate any future tuna agreements with the entire region, rather than with individual States, given the high degree of regional integration of fishery management functions adopted by Pacific Island Countries.

➤ Commitments for the 2008-2013 period under the 10th EDF

At FSM level

⁴ The eligibility criteria for budget support can be consulted at URL http://ec.europa.eu/europeaid/how/delivering-aid/budget-support/index_en.htm

The Country Strategy Paper and National Indicative Programme concluded between the EU and FSM for the period covered by the 10th EDF (2008-2013) acknowledge as focal sector of EU cooperation long term programmable development operations in the field of energy with a budget of € 7,470,000 representing 90% of the A-envelope (€ 8,300,000⁵). The remaining support (€ 830,000) is allocated to a technical cooperation facility including support to the National Authorising Officer (NAO). Aid will be delivered mostly through support to projects. The B-envelope for unforeseen needs amounts to € 700,000.

The indicative programme does not provide for budget support, but opens the possibility to reallocate funds to this type of support in the light of changing needs.

At Regional level

At the regional level, the two main priorities under the 10th EDF 2008-2013 are detailed in the Regional Strategy Paper and the Regional Indicative Programme approved by the EU and the 15 ACP Pacific States (that include Solomon Islands, Micronesia and Kiribati, the three signatories of a bilateral fishing agreement with the EU):

- regional economic integration - € 45 million available for development of human resources, key industries and trade capacity, trade arrangements and integration into the world economy. Regional integration is seen as a way of bringing stability and development to the Pacific islands.
- sustainable management of natural resources and the environment - € 40 million to support green measures, help low-lying atolls respond to rising sea-levels, protect biodiversity and support fishery development. The latter includes *inter alia* initiatives to promote greater regional integration of fishery management, increase the efficiency and competitiveness of the local tuna processing industries, strengthen the region capacities to fight IUU fishing, including stock assessment and the development of the monitoring, control and surveillance strategy. Two projects drafted by SPC (SCICOFish & SMACFish, each worth € 10 million) focusing on offshore and inshore fisheries research and management development are already in an advanced submission state. A continuation of action currently supported under the DEVFISH project is also strongly considered under the form of a DEVFISH II programme.

A further € 10 million from the 10th Regional EDF will be available to cover participation of non-state actors and technical cooperation and support for the Regional Authorising Officer (RAO) for the EDF, i.e. the Pacific Islands Forum Secretariat (PIFS). Management of regional fishery development projects can be delegated to the Forum Fisheries Agency (FFA) or the Secretariat for the Pacific Community (SPC).

➤ Past EU intervention in cooperation for fisheries development at national and regional levels

At FSM level, prior interventions focused also on renewable energy. FSM is a relatively new member of the ACP group having joined on signature of the Cotonou Agreement in June 2000.

At regional level, interventions of the EU have traditionally focused on management of natural resource, with the fisheries sector seen as one of main pillar of development. Under the 9th EDF (2003-2007), the following projects have been funded to support strengthening of fisheries management including research and control:

- Pacific Regional Coastal Fisheries Development Programme (PROCFISH) under 9th EDF, contribution agreement signed with SPC (€ 10.2 million): focus on management of certain coastal fisheries and oceanic fisheries, with an extension (CoFISH, € 2 million) to cover ACP States not included under PROCFISH.

⁵ Equals € 1.4 million per year. The FPA contribution is € 0.56 million per year in total, of which € 0.10 million (18%) are allocated to support the implementation of the fisheries policy.

- Development of Tuna fisheries in the Pacific ACP countries (DEVFISH) under 9th EDF, contribution agreement signed with FFA (€ 3 million in total): focus on development of locally based tuna industries, training to fisheries access negotiation, support to fishery policy development in certain Pacific countries. DEVFISH is due to finish Dec. 2009.
- Scientific support to Oceanic Fishery Management in the WCP area (SCIFISH) under 9th EDF, contribution agreement signed with SPC (€ 6.5 million): focus on improvement of scientific advice (data collection, stock assessment) and pilot projects on control of fishing activities (use of modern technology, including satellite-based technology to detect IUU fishing)

The Pacific Region, including FSM, may also benefit from the activities of the two large intra-ACP projects: Strengthening Fisheries Products Health Conditions (support to third countries to meet the requirements of the SPS regulations), and Strengthening Fisheries Management in ACP countries (ACP FISH II: improving institutional capacities for sustainable fisheries management in ACP countries).

Under the previous EDFs, a number of other projects focusing on fisheries had been funded at regional level including tuna tagging, port sampling or observations at sea.

1.4.2. The European Investment Bank

The EIB has no outstanding operations in FSM. The Bank is currently negotiating a global loan with the FSM Development Bank in order to grant a credit line aiming at financing National SME's. According to the EIB, this credit line should be in operation as from 2010.

1.4.3. Other Donors

The largest single donor to FSM is the United States, providing some € 58 million per annum through the Compact agreement and an additional € 38 million per annum through a variety of instruments including Federal grants. Most Compact funds are directed toward the Health and Education sectors. In total the US provides 90% of all aid to FSM.

Japan provides about € 4 million for infrastructure projects and China € 4million, half of which goes into budget support. The Asian Development Bank is active and provides assistance to the FSM of about € 0.78 million in grants plus financing of technical assistance programmes mostly to improve civil society's involvement in development and to address poverty issues more explicitly. Annual EU bilateral assistance amounts to EUR 1.4 million accounting for about 1.2% of total annual ODA received, but none of the EU member country states have major aid programmes or support strategies in FSM.

2. INFORMATION ON TUNA FISHERIES

2.1. The Tuna Fisheries in the Western Central Pacific

2.1.1. Overview

World catches of the three major tuna species (skipjack, yellowfin and bigeye) for all types of gears combined totalled over 4.1 million tonnes on average over the 2005-2007 period. The Western and Central Pacific area is the main fishing ground for tunas, cumulating 53% of world catches on average, ahead of the Indian Ocean (25%), the Eastern Pacific (14%) and the Atlantic Ocean (8%).

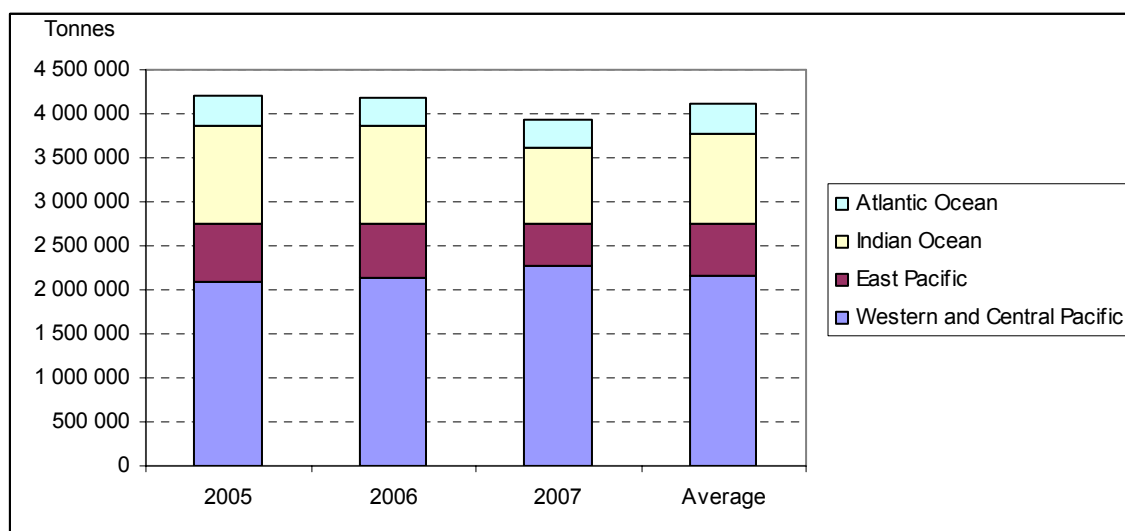


Figure 2 : Distribution of World catches of skipjack, yellowfin and bigeye across all oceans for the period 2005-2007 all types of gears aggregated. Source : FAO

According to the WCPFC, the provisional total WCP tuna catch for 2008 was estimated at 2,426,195 tonnes, the highest annual catch recorded, 6,000 tonnes higher than the previous record in 2007 (2,420,082 tonnes). During 2008, the purse seine fishery accounted for an estimated 1,783,669 tonnes (74% of the total catch, and a record for this fishery), with pole-and-line taking an estimated 170,805 tonnes (7%), the longline fishery an estimated 231,003 tonnes (10%), and the remainder (10%) taken by troll gear and a variety of artisanal gears, mostly in eastern Indonesia and the Philippines. The WCP tuna catch (2,426,195 tonnes) for 2008 represented 81% of the total Pacific Ocean catch of 3,009,477 tonnes and 56% of global tuna catches in all oceans.

The following figure shows the distribution of catches per 5° square. Most of the WCP tuna fisheries are concentrated in the tropical area bound by 20°N and 20°S. According to FFA, the waters under jurisdiction of Parties to the Nauru agreement (the PNA)⁶ account for 80% of the catch of the equatorial purse-seine fleet and 30% of the bigeye longline fleet.

⁶ The current PNA members are Federated States of Micronesia (FSM), Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands and Tuvalu

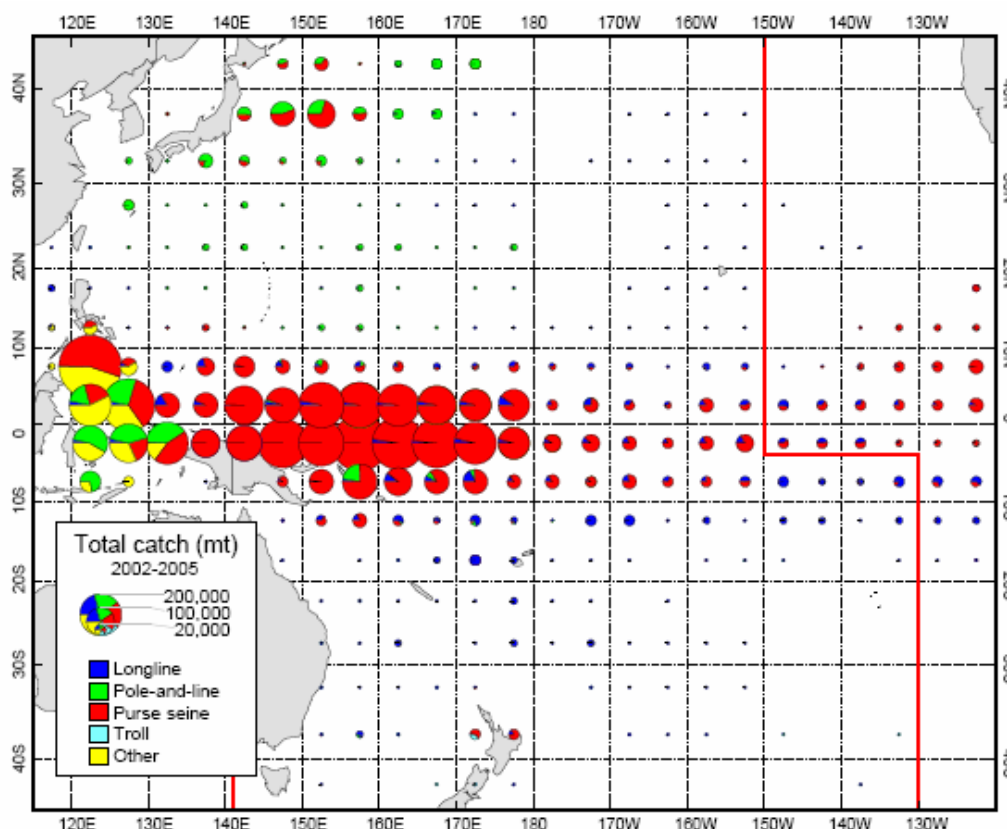


Figure 3 : Distribution of catches of tunas in the WCP area by gear over the 2002-2005 period. Source: SPC

The following section will review the two main fisheries in which European Community operators have some interests, namely the purse seine fishery and the longline fishery.

2.1.2. The purse seine fishery

➤ Fishing fleets

During the mid-1980s, the purse seine fishery accounted for only 40% of the total catch in the WCP, but has grown in significance to a level now contributing around 74% of total tuna catch volume (1,800,000 tonnes in 2008, see next section). The majority of the historic WCP purse seine catch has come from the four main distant-water fleets (Japan, Korea, Taiwan and USA), which numbered 147 vessels in 1995, but has gradually declined in numbers to a low of 111 vessels in 2006 before increasing to 130 vessels in 2008 due to the arrival of newly-flagged US vessels. In contrast, Pacific Islands fleets peaked in 2005 (75 vessels) but have dropped back to 59 vessels in 2008. The remainder includes a large number of smaller vessels in the Indonesian and Philippines domestic fisheries, and a variety of other domestic and foreign fleets, including several relatively recent distant-water entrants into the tropical fishery like China, New Zealand and Spain which has a record of four vessels active in the area over the last three years. The Spanish fleet accounts for 1% of the total purse seine fleet operating in the WCP area.

The next table displays the number of purse seiners operating in the WCP area by flag, and the next figure, the evolution of the purse seine fleets for three main groupings: distant-waters fishing nation fleets, domestic fleets of Pacific island, domestic fleets non-Pacific islands (e.g. Philippines)

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Table 4 : Number of purse seiners active in the WCP area by flag. Source : SPC

Flag	2005	2006	2007
Australia	0	3	2
China	8	9	10
FSM	6	3	4
Japan	35	35	35
Kiribati	1	1	1
Korea	28	28	28
Marshall	6	5	5
New Zealand	11	11	10
Papua New Guinea	42	40	41
Philippines	10	11	12
Solomon	3	4	5
Spain	3	3	3
Taiwan	34	34	34
USA	15	13	13
Vanuatu	8	7	10
TOTAL	210	207	213

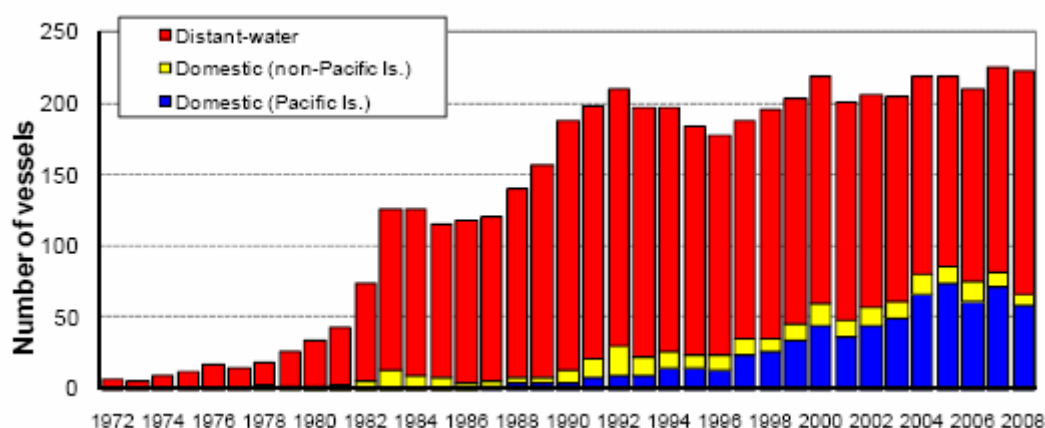


Figure 4: Figure 5 : Number of purse seiners operating in the WCP area. Source : SPC

It should be noted that the US purse seine fleet commenced a significant rebuilding phase in late 2007 supported by Taiwanese investments, with vessels numbers in 2008 of 32. The number of US purse seiners active in 2009 was reportedly close to its maximum capacity of 40 units.

➤ Catches

According to WCPFC, the provisional 2008 purse-seine catch of 1,783,669 tonnes was the fifth consecutive record for this fishery but only 23,000 tonnes higher than the previous record in 2007. The 2008 purse-seine skipjack catch (1,409,921 tonnes 79% of the total catch) was clearly lower than the record catch of 2007, although the purse-seine skipjack catch has now increased by more than 500,000 tonnes (or 59%) since 2001 (919,410 tonnes), at an average of about 70,000 tonnes per year. The 2008 purse-seine catch of yellowfin tuna (325,904 mt – 18%) was clearly the highest on record – the 2008 yellowfin catch was more than 95,000 mt (40%) higher than in 2007, and 65,000 mt (25%) higher than the previous record taken in 1998. The provisional catch estimate for bigeye tuna for 2008 (46,811 mt –3%) was also the highest on record but may be revised once all observer data for 2008 have been received. The following table shows the purse seine catches by flag over the last four year. It shows that the main distant-fishing nations (e.g. Taiwan, Korea, Japan) remain at the

origin of a large part of the catches in the WCP area. Some Pacific Islands domestic fleets like Papua New Guinea principally and Vanuatu and Marshall Islands to a lesser extent emerge as major players.

Catches by purse seiners of the European Community (only Spanish vessels) in the WCP area consistently increased over the last four years from 3,400 tonnes in 2005 to more than 35,400 tonnes in 2008 (a ten fold increase). Nevertheless, Spain remains a minor player compared to other distant-water fishing nations with 1% of purse seine catches on average, but 2% in 2008.

Table 5: Purse seine catches (tonnes) in the WCP by flag. Source WCPFC*

Flag	2005	2006	2007	2008	Average
China	48 672	52 757	54 949	55 562	52 985
EPO US	709	709	709	709	709
FSM	28 037	10 340	13 504	18 133	17 504
Indonesia	181 095	204 600	206 696	206 696	199 772
Japan	251 068	250 685	265 143	221 524	247 105
Kiribati	7 107	4 664	5 452	5 758	5 745
Korea	204 556	251 863	258 249	248 874	240 886
Marshall Isl.	56 174	42 358	59 410	32 884	47 707
New Zealand	24 162	24 682	36 628	28 723	28 549
PNG	231 896	229 150	226 900	202 891	222 709
Philippines	168 657	182 357	205 182	244 012	200 052
Solomon Isl.	16 432	22 511	17 310	14 845	17 775
Spain	3 432	10 862	19 747	35 483	17 381
Taiwan	195 132	210 252	232 624	204 062	210 518
USA	86 204	68 471	88 753	205 018	112 112
Vanuatu	74 746	61 913	71 292	38 729	61 670
TOTAL	1 578 079	1 628 174	1 762 548	1 763 903	1 683 176

* Catches data presented in this table may slightly differ from catch data used in the main text due to incomplete coverage at the time of publication of the SPC yearbook from which figures are drawn.

As shown in the following figure, the Taiwan fleet had been the highest producer in the tropical purse seine fishery until 2003, when surpassed by the combined Pacific Islands purse seine fleets fishing under the FSM Arrangement⁷. From 2006-2007, the Korean and FSM arrangement fleets were the highest producers, but there has been a notable decline in the FSM Arrangement fleet catch and effort due to a reduction in the number of vessels (some vessels reflagged to the US purse-seine fleet). The fleet sizes and effort by the Japanese and Korean purse seine fleets have been relatively stable for most of this time series. Several Taiwan vessels re-flagged in 2002, dropping the fleet from 41 to 34 vessels, with fleet numbers stable since. The increase in annual catch by the FSM Arrangement fleet until 2005 corresponded to an increase in vessel numbers, and coincidentally, mirrors the decline in US purse seine catch, vessel numbers and effort over this period. However, as noted above, the US purse-seine fleet commenced a significant rebuilding phase in late 2008, with vessels numbers in mid-2008 close to double that of recent years. The increase in vessel numbers in the US purse seine fleet is reflected in the sharp increase in their catch and effort during 2008, which is now in line with the other major purse seine fleets.

⁷ The FSM Arrangement was developed as a mechanism for domestic vessels of the PNA to access the fishing resources of other parties. It came in force in 1995. Signatories are Federated States of Micronesia, Marshall Islands, Nauru, Palau, Papua New Guinea and Solomon Islands. The FSM Arrangement aims to: Provide access for Domestic Vessels to parties' waters on terms no less favourable than those granted to distant water fishing nations; secure maximum sustainable economic benefits from tuna resources; promote greater participation by nationals of Parties in fisheries & assist in development of national fisheries industries; allow access to vessels on terms consistent with Palau Arrangement.

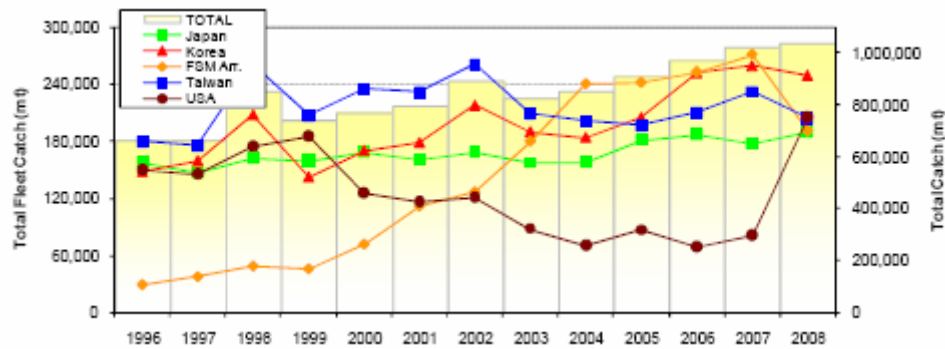


Figure 5: Evolution of the catches of the five main purse seine fleets. Source : SPC

The total number of Pacific-island domestic vessels has now dropped back to 59 vessels after a period of sustained growth over more than a decade – at its' peak, there were 75 vessels (2005) in this category. The Pacific-islands purse seine fleets comprise vessels fishing under the FSM Arrangement (28 vessels in 2008), the Vanuatu fleet operating under bilateral arrangements (5 vessels) and domestic vessels operating in PNG and Solomon Islands waters. The FSM Arrangement fleet comprises vessels managed by the Pacific Island "Home Parties" of PNG (16 vessels), the Marshall Islands (5 vessels), FSM (3 vessels), Kiribati (1 vessels) and the Solomon Islands (3 vessels) which fish over a broad area of the tropical WCP area.

The estimated delivered value of the purse seine tuna catch in the WCPFC area for 2008 is USD 3.1 billion (€ 2.1 billion) the highest level since at least 1997. This represents an increase of USD 731 million or 43% on the estimated delivered value of the catch in 2007. This increase was driven by a USD 496 million (25%) increase in delivered value of the skipjack catch, which is estimated alone to be worth USD 2.5 million in 2008, resulting from a 31% increase in the composite delivered price that more than offset the decline of 4% in the catch. The value of the yellowfin catch rose even more sharply to around USD 633 million with a rise of 13 % in the composite price and a 41% in catch.

2.1.3. The longline fishery

➤ Fleets

The longline fishery accounts for around 10–13% of the total WCP catches. The total number of vessels involved in the fishery has generally fluctuated between 3,500 and 5,500 for the last 30 years. The fishery involves two main types of operation:

- large (typically >250 GRT) distant-water freezer vessels which undertake long voyages (months) and operate over large areas of the region. These vessels may target either tropical (yellowfin, bigeye tuna) or subtropical (albacore tuna) species. Voluntary reduction in vessel numbers by at least the Japanese fleet has occurred in recent years⁸.
- smaller (typically <100 GRT) offshore vessels which are usually domestically-based, undertaking trips less than one month, with ice or chill capacity, and serving fresh or air-freight sashimi markets, or canneries specialising on albacore (white meat tuna for the US market).

According to EU report to the WCPFC, the number of EU longliners from Spain operating for at least part of their fishing time in the WCP area has grown from 8 vessels in 2005 to 17 in 2008 (10 in 2006). However, they represent a marginal portion of the 5,000 or so longliners operating in this area. The Spanish vessels operate on the South Pacific distant-water swordfish fishery, which is a relatively new fishery distinct from the longline fisheries exploiting tropical tunas and albacore.

⁸ Japan committed to cut its longline tuna fleet by almost 20 percent. Japan's Fisheries Agency announced in January 2009 that one hundred of Japan's 739 longline fishing vessels should be scrapped by the end of March 2009.

➤ Catches

The provisional WCP longline catch of target species (231,003 tonnes) for 2008 was the lowest since 2000 and around 12% lower than the highest on record which was attained in 2004 (264,465 tonnes). The WCP albacore longline catch (69,920 tonnes – 30%) for 2008 was the lowest since 2000. The provisional bigeye catch (87,504 tonnes – 38%) for 2008 was close to the average for the period 2000–2008, and the yellowfin catch (69,516 tonnes – 30%) was similar to the 2007 catch but the lowest since 1999. Swordfish catches, either as a result of targeted fisheries or as by-catches of tuna fisheries, totalled 24,799 tonnes in 2008, ahead of 2007 catches (23,644 tonnes).

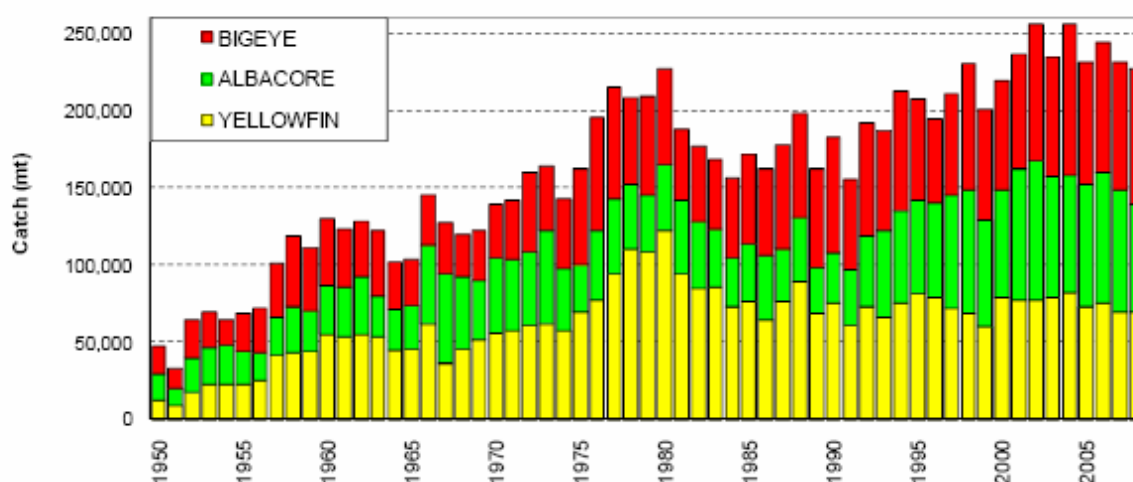


Figure 6: Longline catch for the three major species in the WCP area. Source : SPC

In terms of Nationality, the fishing fleets flying flags of Taiwan, Japan and China cumulates more than half of total longline catches in the WCPO. Total catches reported by Spain in the WCP area were of 9,800 tonnes in 2007 and 7,230 tonnes in 2008 all species included (inc. oceanic sharks). Catches of swordfish were of 4,200 tonnes in 2007 and 3,400 tonnes in 2008⁹. Spanish longline catches represent 1% of total WCP longline catches, but 22% of reported swordfish catches for the same area.

A significant change in the WCP area longline fishery over the past 10 years has been the growth of Pacific Islands domestic albacore fishery, which has gone from taking 33% of the total south Pacific albacore longline catch in 1998, to accounting for around 50-60% of the catch in recent years. The combined national fleets making up the Pacific Islands domestic albacore fishery have numbered around 300 (mainly small “offshore”) vessels in recent years.

The estimated delivered value of the longline tuna catches in the WCPFC area for 2008 is USD 1.4 billion (€ 950 million). This represents a increase of USD 263 million on the estimated value of the catch in 2007. The value of the albacore catch increased by USD 20 million (13%) while the value of the bigeye catch increased by USD 148 million (26%) and the value of the yellowfin catch increased by USD 96 million (25%). The albacore catch was estimated to be worth USD 174 million in 2008 with the 13% increase being driven by 28% increase in the composite price than more than offset a 12% decline in catch. The bigeye catch was estimated to be worth USD 724 million with the catch rising 6% and the composite price increasing by 18%. The estimated delivered value of the yellowfin catch was at USD 486 million accounted solely by the 25% increase in composite price.

2.2. Status of stocks

⁹ Spain also declares catches in the area overlapping between WCPFC and IATTC. The total catches reported in this particular rectangle were of 1,150 tonnes in 2007 and 4,200 tonnes in 2008 for all species, including 517 tonnes and 2,280 tonnes of swordfish for 2007 and 2008 respectively

The status of the main tuna stocks exploited in the WCP equatorial area is monitored by the Scientific Committee installed under the WCPFC. The following sections summarise the latest scientific advices produced by this Committee during its 5th session held in August 2009 in Vanuatu for the species targeted by the EU fishing fleet in the WCP area.

2.2.1. Skipjack

Skipjack tuna is a fast growing, short-lived species (maximum age ~3 years) that has rapid population turnover. It has high resilience to fishing and can support annual catches at the current level (1.7 million tonnes). The majority of exploitation occurs on fish that have already reached reproductive maturity (age 1+). Most skipjack therefore have the opportunity to reproduce before they are exposed to intensive fishing. According to the key conclusions of the models presented in 2007, **overfishing is not occurring and the stock is not in an overfished state**. The high recent catches are considered to be sustainable unless recruitment falls persistently below the long-term average. The WCPFC Scientific Committee did not formulate any specific management recommendation. However, it is noted that any increases in purse-seine catches of skipjack may result in a corresponding increase in fishing mortality for bigeye and yellowfin tunas.

2.2.2. Yellowfin

Yellowfin tuna has a life span of up to ~7 years of age, grows rapidly and has moderate population turnover. Yellowfin begins spawning at ~1.5–2 years of age (~100 cm fork length or 20 kg). The current catch levels are 400,000–450,000 tonnes, mainly taken in the western equatorial region of the WCPO by purse-seine and the domestic fisheries of Philippines and Indonesia. The purse-seine fishery catches juvenile yellowfin in floating-object sets (logs and fish aggregation devices, or FADs) and large yellowfin from free-school sets. Large catches of juvenile yellowfin are taken by the domestic fisheries of Philippines and Indonesia. The most recent (2009) stock assessment for yellowfin is slightly more optimistic than the previous indicating that **overfishing is not occurring and that the stock is not in an overfished state**. The entire stock appears to be capable of producing MSY. The WCPFC Scientific Committee has recommended that there be no increase in fishing mortality in the western equatorial region, where ~95% of the catches are taken and where the spawning biomass is indicated to have declined to 30% of the unexploited level. Most of the stock depletion is attributable to the Indonesian and Philippines domestic fisheries and the purse-seine fishery. The longline fishery has a relatively low impact on the yellowfin stock.

2.2.3. Bigeye

Bigeye tuna lives to at least 12 years of age, grows more slowly than yellowfin, has lower natural mortality, and a smaller stock size. Bigeye reaches a maximum size of ~120 kg, and begins spawning at ~3–4 years of age (~110 cm fork length or 30 kg). While the biggest component of the catch is larger fish caught by longline, significant exploitation of juveniles occurs in the purse-seine fishery setting on floating objects and in the domestic fisheries of Philippines and Indonesia. These juvenile catches have high impact on the subsequent adult population. Recent assessments show that **overfishing of bigeye tuna is currently occurring** with conditions having deteriorated since the previous assessment. The WCPFC Scientific Committee has recommended that fishing mortality be reduced by 34%–50% from the average levels for 2004–2007 to keep the biomass at MSY level. The large stock depletion is attributable to the longline fishery and, to a lesser extent, fisheries that capture juvenile bigeye tuna.

2.2.4. Swordfish

Swordfish are one of the most widely distributed pelagic species, distributed globally, and observed from 50°N to 50° S and at all longitudes in the Pacific Ocean. The assessment carried out in 2008 concluded that there was a high probability that the swordfish stock was currently **not in an overfished state** and that current effort levels were probably **not over-exploiting the stock**. The

available data did not suggest that the South-Central Pacific fishery was having a sizeable impact on the population. However, the data were not considered to be very reliable. Given some uncertainties in historical swordfish catch data, this preliminary and qualitative observation about the stock status should be interpreted with caution. Consequently, The SC recommended that the catch limits specified in CMM-2008-05 (e.g. 3,107 tonnes in 2009 for the EU) be carried forward to future years as a continuing measure. Probably faced with difficulties to monitor catches and to ensure consistency with IATTC measures, the catch limit will be replaced by a limit on the number of fishing vessels authorised (14 for the EU as per provisional CMM-2009-03 adopted late 2009).

In summary, there are continued concern regarding the stock status of both yellowfin and bigeye tuna. This is not new. The WCPCF Scientific Committee has consistently recommended reductions of fishing mortality at least on bigeye since the creation of WCPFC especially in the equatorial region where both the purse seine and longline fisheries develop.

2.3. Ecosystem considerations

SPC carries out considerable research on the impact of fishing on the environment. The following summarises the most recent findings.

The tuna fisheries of the WCP principally target four main tuna species: skipjack, yellowfin, bigeye and albacore tuna. However, the method fisheries also catch a range of other species in association with these main species. Some of the associated species are of commercial value (by-product), while many others are of no value and are, consequently, discarded. There are also incidents of the capture of species of importance due to their ecological and/or social significance ('protected species'), including marine mammals, sea turtles and some species of shark (e.g. whale sharks).

Overall, catches from unassociated and associated purse-seine sets are dominated by the tuna species (99.9% and 98.6%, respectively) and there has been limited interaction with protected species. Most of the observed interactions involved unidentified species of marine mammals and few mortalities have been recorded.

Species composition of the catch was also estimated for three main longline fisheries operating in the WCPO: the western tropical Pacific (WTP) shallow-setting longline fishery, the WTP deep-setting longline fishery, and the western south Pacific (WSP) albacore fishery. While estimates are uncertain due to the low level of observer coverage, some general conclusions are available. The main tuna species account for 46%, 72% and 72% of the total catch (by weight) of the three fisheries, respectively. Blue shark was the third-ranked species in the catch composition of all three fisheries. The WTP shallow fishery has a higher proportion of non-tuna species in the catch, principally shark and billfish species, while opah (moonfish) represents a significant component of the WSP albacore longline catch. There are also considerable differences in the species composition of the billfish catch between the three fisheries, while overall the WTP shallow and WSP albacore fisheries catch a higher proportion of surface-orientated species compared to the WTP deep-setting fishery.

Interactions with seabirds and marine mammals were very low in all three longline fisheries. Catches of the five species of marine turtles were observed in the equatorial longline fishery, although the observed encounter rate was very low and most of the turtles caught were alive at the time of release.

2.4. Analysis of the access arrangements in the WCP and implications for the EU fishing fleet

Access to fishing opportunities for tuna stocks in the Western and Central Pacific region is regulated through a series of multilateral and bilateral fisheries agreements. Within the multilateral framework, the principal mechanisms are the Western and Central Pacific Fisheries Commission, which has overarching responsibility for tuna management in the region, and the Palau Arrangement, which establishes a scheme for allocating purse seine fishing opportunities in the waters under the jurisdiction of the Parties to the Nauru Agreement (a sub-regional grouping possessing waters in which most purse seine fishing takes place). In order to fully understand the regional management framework, however, a brief overview of all of the arrangements must be provided.

2.4.1. Multilateral Framework

There are several relevant international agreements, arrangements and schemes applicable to the international tuna fisheries in the Central and Western Pacific, although these largely fall into three main frameworks:

- the Western and Central Pacific Fisheries Commission (WCPFC), a regional fisheries management organization open to both coastal States and distant water fishing nations (DWFNs);
- the Forum Fisheries Agency (FFA), a regional body open only to coastal States; and
- the Nauru Agreement, a sub-regional agreement involving 8 Pacific island States.

➤ Western and Central Pacific Fisheries Commission (WCPFC)

The Western and Central Pacific Fisheries Commission was established under an international convention¹⁰ which entered into force on 19 June 2004. The Commission currently has 25 members,¹¹ including the EU and several other DWFNs. In addition, 7 territories are recognized as participating territories¹² and five countries as cooperating non-members.¹³ The general objective of the Convention/Commission is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean. The Commission has competence with respect to all species of highly migratory fish stocks (except sauries) throughout the Central and Western Pacific region and has responsibility for adopting conservation and management measures applicable throughout the range of the stocks. As is usual, it does not have powers to adopt specific regulatory measures applicable in waters under national jurisdiction without the consent of the coastal State but members of the Commission have the duty to cooperate to establish compatible measures for high seas and waters under national jurisdiction. Its main functions include:

- adopting conservation and management measures and recommendations, including setting the total allowable catch and level of fishing effort for specific stocks;
- allocating the total allowable catch or the total level of fishing effort amongst members;
- establishing mechanisms for monitoring, control, surveillance and enforcement (including VMS).

Although a relatively new organisation, the Commission is to a large extent the central decision-making body in the region – in particular as decisions about the total level of fishing effort and catches are adopted within the Commission (although the Commission has yet to set TACs for specific stocks). In practice, however, the Commission also adopts measures which are fed in or established under other processes such as the Nauru Agreement and related Arrangements.

➤ Forum Fisheries Agency (FFA)

The Forum Fisheries Agency (FFA) was established in 1979 under an international convention signed by 12 members of the South Pacific Forum, and now has 17 members¹⁴ (all of which are also

¹⁰ Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, opened for signature in September 2000.

¹¹ Australia, China, Canada, Cook Islands, European Community, Federated States of Micronesia, Fiji, France, Japan, Kiribati, Korea, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, Solomon Islands, Chinese Taipei, Tonga, Tuvalu, United States of America, Vanuatu.

¹² American Samoa, Commonwealth of the Northern Mariana Islands, French Polynesia, Guam, New Caledonia, Tokelau, Wallis and Futuna.

¹³ Belize, Indonesia, Senegal, Mexico, El Salvador (Ecuador will join this group in 2010)

¹⁴ Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

members of WCPFC). Membership of FFA is open only to Pacific Island coastal States and territories, and the objective of the Agency is to coordinate and administer regional fisheries policies and management, in particular with a view to presenting a common front to DWFNs seeking access to the tuna resources in the region. The main functions of the Agency, as defined in the FFA Convention, include:

- providing advice, information and assistance in the development of fisheries policies and negotiations, and assistance in the issue of licences, collection of fees or in matters pertaining to surveillance and enforcement;
- collecting and analysing relevant statistical and biological information;
- collecting and disseminating information concerning management procedures, legislation and agreements.

In practice, the FFA plays a central role in the coordination of Pacific island fisheries policies and provides central administrative / secretariat functions for several of the multilateral treaties and agreements, including the US treaty and the Nauru Agreement (and related arrangements). FFA also coordinates the regional register of foreign fishing vessels and the regional VMS scheme.

➤ **Niue Treaty**

The Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement was adopted in 1993 and all FFA Members, except Tokelau, are parties. The agreement is, legally, a stand-alone agreement although it was adopted directly in response to Article 5 of the FFA Convention (calling for the promotion of intra-regional coordination and cooperation in fisheries surveillance and law enforcement) and the FFA has certain administrative responsibilities under the Treaty and so, in practice, taking account also of the largely concurrent membership, the Treaty can be seen as a de facto subsidiary agreement of FFA.

The Treaty is an agreement on cooperation between FFA members on monitoring, control and surveillance of fishing, and includes provisions on exchange of information and procedures for cooperation in monitoring, prosecuting and penalising illegal fishing vessels. It is designed to complement the other management frameworks in the region, and specifically defines its relationship to harmonized minimum terms and conditions of access. Despite initial broad political support for the Treaty, there has to date been minimal implementation of it. In recent years, however, there has been renewed interest resulting in the organisation and implementation of joint deployment plans. Consideration is currently being given to a subsidiary, or supplementary, agreement, possibly to include the United States and France (on behalf of its territories in the South Pacific), both of which participate in regional multilateral enforcement actions¹⁵.

➤ **Nauru Agreement (NA)**

The Nauru Agreement was adopted in February 1982, and now has eight parties – the Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, the Solomon Islands and Tuvalu (usually referred to collectively as the Parties to the Nauru Agreement or PNA). The central objective of the agreement is to coordinate and harmonize the management of fisheries with regard to common stocks within the Parties' fisheries zones, in particular with regard to the access of foreign fishing vessels. The types of cooperation envisaged by the agreement include establishing principles for the granting of priority to domestic fishing vessels; and establishing uniform (minimum) terms and conditions for foreign fisheries access, including in relation to licensing, use of observers, reporting, vessel marking, etc.

The Nauru agreement is a framework, containing objectives rather than specific provisions on access, but has been implemented by three Implementing Arrangements (1982, 1990 and 2008) which set out the detailed Minimum Terms and Conditions of Access to the Parties fisheries zones and by two

¹⁵ France is involved in these joint operations through a cooperation memorandum signed with New Zealand and Australia on fight against IUU fishing in the South Pacific region.

supplementary arrangements on purse seine fishing (the Palau Arrangement and the FSM Arrangement).

Implementing Arrangements – Harmonized Minimum Terms and Conditions of Access

The Nauru Agreement has been supplemented by three Implementing Arrangements, which apply cumulatively, setting out Harmonized Minimum Terms and Conditions (MTCs) of Access. The MTCs contained in the Implementing Arrangements are considered within the region to be the most important of the various arrangements. The terms and conditions include the requirement of foreign fishing vessel to be registered and in “good standing” both in the Regional Register of Vessels and the FFA VMS register, a ban on transshipment at sea, reporting requirements, etc.

The MTCs are generally concerned with the conditions that apply once access has been granted, rather than the question of access itself. However, the third Implementing Arrangement (adopted in 2008 and applicable to any future EU fisheries agreements) contains a restriction on access to certain high seas areas (applicable from 1 January 2010). Thus, Article I(3) of the Arrangement provides that a foreign fishing vessel must not fish, during the period of validity of a licence issued by a PNA: (a) in the area of high seas bounded by the national waters of the Federated States of Micronesia, Indonesia, Palau and Papua New Guinea (the high seas area to the west of the PNA area); or (b) the area of high seas bounded by the national waters of the Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Papua New Guinea, Solomon Islands and Tuvalu (the high seas “enclave” in the centre of the PNA area). The following map shows the two high seas pockets subject to prohibition.

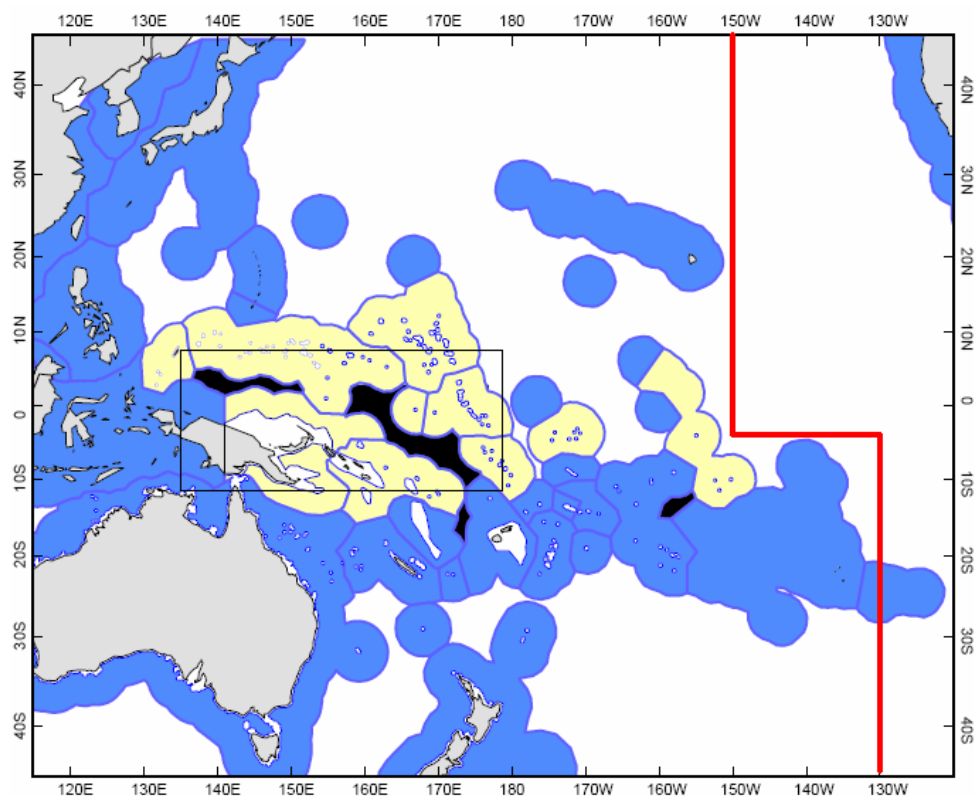


Figure 7 : High-Seas pockets subject to seasonal closure to the purse seine fishery. Yellow: EEZ of the Parties to the Nauru Agreement. Source: WCPFC

The majority of the MTCs have been built into the fisheries legislation of FFA members and form part of the licensing conditions for foreign fishing vessels under bilateral arrangements.

Palau Arrangement

The objective of the Palau Arrangement is to manage the purse seine fishery within the PNA region through a system for allocating fishing opportunities to coastal States and DWFNs. A key objective for the PNA when concluding the Arrangement was to enable the gradual reduction of foreign vessel fishing and shift towards the domestic or locally-based (foreign vessel) fleet.¹⁶

The Arrangement applies to the “Purse Seine Fisheries Management Area”, defined as the exclusive economic or fisheries zones of the Parties and the adjacent high seas areas in the Western Pacific within which purse seine vessels operate, and to any species of tuna and tuna-like species taken by purse seine vessels (within the Management Area). The Arrangement provides an institutional structure for managing allocation/licensing decisions and a set of criteria for allocating licences. In essence, licences are allocated in the following order of priority:

- a) a Party's domestic vessels;
- b) domestic vessels of another Party to the Arrangement, or vessels operated jointly by PNA;
- c) locally-based foreign vessels;
- d) foreign fishing vessels with established access arrangements over previous years and with good records of compliance with national laws and regulations, the minimum terms and conditions and reporting requirements of the Parties; and
- e) new foreign fishing entrants to the fishery.

For the purpose of (c), a “locally-based foreign fishing vessel” is defined as a foreign fishing vessel which is based in a Party to the Arrangement, lands all of its catch in that Party and/or operates under a joint venture arrangement in the territory of that Party or under arrangements whereby the operator of the vessel is participating in shore-based developments or is otherwise making a substantial contribution to the development of the domestic tuna industry of the licensing Party.

Until recently, the manner in which fishing effort was managed under the Palau Arrangement was to set a maximum limit on the number of vessels to be licensed (the limit was 205 vessels, see below) and to allocate licences to individual flag States as per the following table. This system has now been replaced by the Vessel Day Scheme, however.

Table 6 : Maximum purse seine licence numbers as per previous version of the Palau Arrangement (now superseded by the vessel days scheme). Source: FFA

Category	Number (agreed May 2007)*
1- Multilateral Access	
US Treaty	40
2- Bilateral Foreign Access	
Japan	35
Taiwan	33
South Korea	27
Philippines	10
China	4
European Union	4
Subtotal 1+2	153
3- Domestic / Locally-Based	
All parties	52
TOTAL	205

* Not including special arrangements: EU vessels part time in Kiribati waters only (2 additional to the 4 agreed), Domestic/Locally-based (+15), China (+6), South Korea (+1), Philippines (+2) and Taiwan (+1). These arrangements remain in force as long as the number of US vessels is below its maximum allocation of 40 vessels.

¹⁶ The rationale was that as the number of vessels for each DWFN fleet reduced, this would stimulate an increase in access fees paid to FFA members and at the same time would encourage the foreign vessels, particularly the displaced vessels, to base locally in FFA members thus increasing the economic benefits.

FSM Arrangement

The final instrument in the Nauru framework is the Federated States of Micronesia Arrangement for Regional Fisheries Access, which was signed in November 1994 and came into force in September 1995. All PNA are parties to the FSM Arrangement, except Kiribati and Tuvalu. The Arrangement was developed as a mechanism for domestic fishing vessels of the PNA to access the fishing resources of the other Parties and aims to provide access for domestic vessels to Parties' waters on terms no less favourable than those granted to DWFNs (and on terms consistent with the Palau Arrangement). Domestic vessels include vessels flying the flags of the parties, but also other non-parties sponsored flags that can demonstrate a high contribution to Parties economy. As an example, most Vanuatu purse seiners are beneficiary of the FSM Arrangement as they unload most of their catch in Papua New Guinea (Vanuatu is not party to the FSM arrangement).

Technically, the Arrangement establishes a regional register of eligible fishing vessels, through which access is licensed, and contains provision on exchange of information, distribution of payments and cooperation in enforcement. To qualify on this register, a vessel has to have a good record of compliance and demonstrate large interactions with the parties shore-industries. As with the other components of the Nauru Agreement, the FSM Arrangement is administered by FFA. FFA audits the qualification criteria of the vessels sponsored by the parties and collect licence fees. Currently, a vessel has to pay the equivalent of 5% of the value of its catch to be granted access to all EEZ of the parties to the FSM Arrangement. Licence fees collected are distributed to parties by FFA pro rata catches in each EEZ.

2.4.2. Palau Arrangement Vessel Day Scheme

The Vessel Day Scheme (VDS) became fully operational on 1 December 2007 and is the mechanism by which fishing effort is managed within waters under the national jurisdiction of Palau Arrangement Parties. It applies to fishing in the area bounded between 20°N and 20°S and the eastern boundary of the WCPFC Convention Area. For Palau parties, the VDS implements applicable provisions of the Conservation and Management Measures (CMMs) adopted by the WCPFC for the region (in particular CMM-2008-01 and, previously, CMM-2005-01). The Scheme replaces the previous licence allocation scheme (based on the number of fishing vessels).

The Arrangement operates by establishing an overall limit on the number of days¹⁷ that can be fished by purse seine vessels operating in the EEZs of the Parties to the Palau Arrangement. The limit is based on the historical level of days fished in the EEZs of parties based on data provided by the Oceanic Fisheries Programme of the Secretariat of the Pacific Community (SPC). The VDS Management Scheme comprises three-year Management Periods and single Management Years, a calendar year. At the commencement of the Scheme (on 1 January 2008) a Total Allowable Effort (TAE) was set for the first Management Period (Table 7 overleaf), covering each of the first three Management Years. The initial TAE reflects the WCPFC recommendation of ensuring the purse seine fishing effort does not exceed 2001-2004 or 2004 level. Until WCPFC adopts another objective to adjust fishing effort for conservation purpose, the annual TAE will remain identical.

¹⁷ For the purpose of the VDS, a fishing day is any calendar day, or part thereof, during which a purse seine vessel is in the waters of a Party outside a port (i.e. whether searching, catching, taking or harvesting fish). A special provision excludes counting days transiting through Party's waters, subject to specific conditions (fishing gear completely stowed).

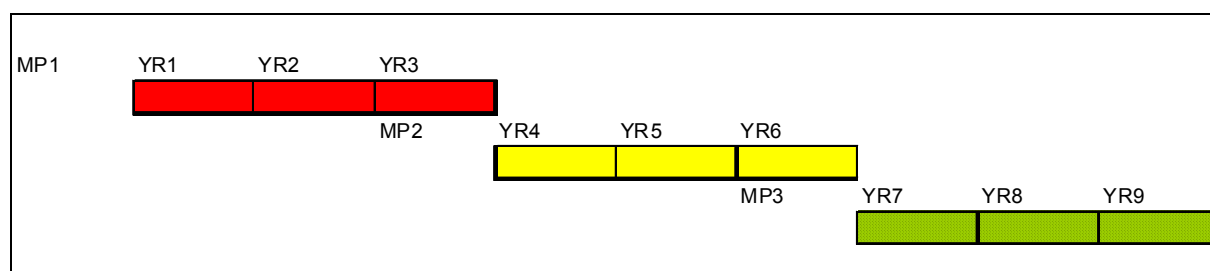


Figure 8 : Management Period (MP) and Management Year (MY) of the Vessel Days Scheme as agreed in May 2009. Source : FFA

A fundamental difference between the VDS Management Scheme and the previous licensing scheme is that the TAE is allocated to the Palau Parties, rather than directly allocating opportunities to the DWFN vessels. Two criteria are used to allocate the TAE amongst the Parties - an equal weighting between the historic level of effort in zone and the level of estimated biomass in each zone each year. This approach recognises that while the historical level of effort is an important determining factor, account needs to be taken of the potential productivity of EEZs, particularly where some Palau Parties may have restricted effort in their EEZs for reasons such as to encourage the operation of domestic purse seine operations, or where there is a more cautious approach to licensing.

Once allocated the Parties are free to utilise their allocated days as they see fit. In principle, this provides the flexibility to provide for new entrants that may offer higher fees than the existing fleets and for Parties to give preference to their domestic fleets should they wish to do. Parties are under an obligation to ensure that their total number of fishing days does not exceed their annual allocation of fishing days but in general Parties have a wide discretion as to how to employ allocated fishing days, including discretion as to which purse seine vessels are licensed to undertake fishing activities.

Vessels operating under the US Treaty and domestic vessels (operating in the waters of the home licensing Party) licensed under the FSM Arrangement are not subject to the VDS Management Scheme, although they are included in the vessel day / effort calculations. Thus, the TAE is calculated for all vessels and then an adjusted TAE for the Palau Parties is calculated by deducting a pool of vessel days based on historical effort (seven year averages, 1998-2004) to take account of US Treaty and FSM Arrangement vessels. The adjusted TAE is then allocated amongst the Palau Parties.

To date, the Parties have agreed to be bound by 2004 effort levels as per WCPFC recommendation, which has resulted in the following vessel day calculations:

Table 7 : Allocation of Total Allowable Effort (TAE) between PNA for the first Management period starting Dec 2007. Source: FFA

Total Allowable Effort (TAE)		Vessel Days		
PNA TAE (2004 levels) (all fleets)		33 856		
Deductions US Treaty (3 362 days) and FSMA (2 025 days)		(5 387)		
Adjusted PNA TAE (2004 level)		28 469		
Party Allowable Effort (PAE)	Allocation criteria			Vessel Days
	EFFORT (%) 7 yr average 99-05	BIOMASS (%) 10 yr average 95-04	AVERAGE (%) 50/50 weighting	
FSM	24.52	19.41	21.96	6 253
Kiribati	16.44	27.07	21.76	6 194
Marshall Islands	4.31	14.85	9.58	2 727
Nauru	7.81	2.39	5.10	1 452
Papua New Guinea	40.17	15.38	27.78	7 907
Palau	0.27	3.91	2.09	595
Solomon Islands	5.34	11.25	8.29	2 361
Tuvalu	1.14	5.74	3.44	979

The VDS Management Scheme provides the Palau Parties with flexibility to carry over unused fishing days to future years, to borrow fishing days from future years and to transfer fishing days between themselves on whatever terms they mutually agree. With respect to transfers between Parties, any two Parties may agree to transfer between themselves all or part of their PAE for a Management Year. With respect to transfers between Management Years and Periods, a Party may adjust its PAE for any Management Year within a Management Period by transferring to that year all or part of its PAE from another year in the same Management Period. Any unused balances can be rolled into future Management Periods up to a maximum of 30% of the PAE from the final Management year of the preceding management period.

The VDS Scheme provides a mechanism to take account of size variations of purse seine vessels. Based on an assessment, undertaken prior to the adoption of the VDS of vessel sizes and catch rates, vessel days are calculated on the following basis:

- for small vessels of less than 50 metres in length, a day of fishing is counted as half a day;
- for vessels greater than 80 metres in length, a day of fishing is counted as one and a half days;
- for vessels in the 50 to 80 metre range a day is equal to a day

[Note: all EU purse seiners currently operating in the WCP area are greater than 80 m, so one day fishing is counted one and half days]

Finally, to secure its effective implementation and administration, the VDS system includes certain registration requirements (including a requirement to have good standing in the FFA regional register), requires payment of an administration fee and imposes certain monitoring requirements (including participation in the FFA VMS scheme).

The VDS is administered by FFA. VMS information is used to count the number of fishing days in each EEZ and to monitor the actual use of fishing days of the parties against their respective initial allocations.

An Update on the VDS

The Vessel Days Scheme started officially in December 2007. The scheme is in its infancy and will undoubtedly require refinement to introduce mechanisms to balance recent levels of fishing effort with the number of vessel days allocated to individual PNA members.

There is no publicly available review of the VDS after two years of implementation. Exchange of information between PNA countries appear also to be minimal. Some country would have reportedly already sold more fishing days than they have. The VDS is also subject to criticisms from PNA countries. The first is that effort from the US fleet operating under the US Treaty is not properly taken into account. The second is that it proves difficult if not impossible to negotiate access to the EEZ for foreign fleet on the basis of a monetary value of a fishing day, although auctioning days was one of the objectives of the scheme. Finally the major criticism is that the VDS provides discrete fishing effort allocation in particular EEZ although the resource is highly migratory with its annual distribution driven by environmental conditions. For example, under a strong El Niño, the tuna resource may concentrate in the waters around Kiribati and be scarce in the waters of FSM. Kiribati would have therefore to negotiate additional days from FSM to accommodate the access requests from the purse seine fleet. FSM would not provide the days for free.

To have a better management of the VDS, but also to strengthen coordination of policies aiming at getting more value from the fish caught in their EEZ, the PNA countries have created a PNA secretariat separate from FFA. It is the intention of the PNA secretariat to pool the PNA fishing days into one common basket and to set a mechanism for redistribution of access fees. The PNA secretariat is based in Marshall Islands and will be funded by contributions from its Member States and by receipts from the VDS and FSM arrangement. The PNA secretariat intends to remain independent and will not accept financial support from third party foreign interests. It is operational since 1st January 2010.

2.4.3. WCPFC Conservation and Management Measures

In principle, WCPFC sits at the top of the management framework as it is the only body that accepts coastal States and DWFNs, it has competence with respect to all highly migratory species throughout the region and that competence applies to such species throughout their range. As might be expected from a relatively new organisation, however, measures adopted by WCPFC have been somewhat limited (at least when compared to the most progressive RFMOs), dealing primarily with the setting of overall effort targets but not usually including specific TACs or quota allocations. Furthermore, as with all tuna management organisations, the functions and powers of WCPFC are without prejudice to the sovereign rights of coastal States to manage fisheries within their waters. Therefore, measures dealing with access questions and licensing and allocation procedures in national waters and allocation methods are left primarily to the coastal State mechanisms, such as the Nauru Agreement. In general, the Parties to the Nauru Agreement that are also Parties to WCPFC seek to promote the EEZ measures developed within these mechanisms within WCPFC's own framework, and to adopt or develop compatible and equivalent measures for the high seas.

The principal measure in place currently is Conservation and Management Measures 2008-01 (CMM-2008-01), which sets out measures for bigeye and yellowfin fishing by purse seines and longlines and came formally into effect on 10 February 2009. For purse seine fishing, CMM-2008-1 sets an overall objective of a 30% reduction in bigeye mortality and a reduction in the risk of overfishing of yellowfin tuna and then sets out a range of measures by which these targets are to be achieved, including effort limitations, area closures, FAD restrictions, etc. These measures apply primarily to the high seas, with measures for EEZs being aligned with the Nauru Agreement MTCs and the Palau Arrangement VDS. Further details in relation to CMM-2008-01 and other effort/catch related measures adopted by the Commission are summarised, along with their implications for the EU, in the next section.

It is important to appreciate how WCPFC management measures apply to individual members and the distribution of fishing opportunities between high seas fishing and fishing within EEZs. Specifically, fishing opportunities taking place within the EEZ, whether by foreign vessels or domestic vessels, are fishing opportunities allocated to, or reserved for, the coastal State. Any fishing which takes place in the waters of a Pacific Island coastal State are in exercise of that coastal State's fishing allocation/rights. Thus, within the WCPFC, the EU is a high seas fishing Member and as such its obligations to meet any effort reduction or limitation measures are confined to its high seas operations. Within EEZs, while overall the coastal State may be subject to effort reduction / limitation targets or requirements, that does not imply *in principle* that every foreign fishing fleet fishing in that country's waters must implement an equivalent reduction or limitation – it is within the sovereign rights of the coastal State to determine how its allocation is used, for example, by increasing the opportunities available to one fleet at the expense of others.

2.4.4. Implications for the EU Fleet

It can be noted that there are very few specific fishing opportunity definitions (i.e. quotas) in the applicable measures, the major exception to this being the TAEs / PAEs under the Palau Arrangement. As far as WCPFC is concerned, however, effort restrictions are defined more generally in terms of overall targets or restrictions to current or recent fishing activity.

➤ High Seas Fishing Opportunities

High seas fishing opportunities are those determined by the WCPFC Conservation and Management measures. These are of course subject to potential renegotiation and change, in particular at each annual meeting, and some provisions apply specifically to 2009 only, and so future opportunities may vary. In qualitative terms, the measures are generally expressed in terms of overall fishing effort or vessel numbers. There are no TACs and, in general, no quota allocations (a specific quota for the EU was granted through CMM-2008-05 for swordfish South of 20°S, but this will be supplemented by a maximum number of fishing vessels). In quantitative terms, the measures typically specify that fishing

effort is not to be increased beyond the current level, the recent average or beyond the maximum amount achieved in recent years. In some cases, Members are presented with the option to choose between different reference points. This results in specific effort limitations in days for the purse seine fishery and 2,000 tonnes per year in the longline fishery. The 103 vessels days recorded for the EU as effort deployed in the high seas (highest figure between 2004 effort and 2001-2004 average effort) are roughly equivalent to 1/3 of a total fishing year of one single purse seiner. In 2007, the EU fleet deployed 245 fishing day. A summary of the current measures is as follows:

Table 8 : Summary of the main management and conservation measures having an impact on the EU fishing fleet active in the WCPCF area

Bigeye and Yellowfin			
Fishery	CMM	Effort limit	Summary of other conditions
Purse seine	2008-01	<ul style="list-style-type: none"> effort in days fished not to exceed 2004 levels or the average of 2001-2004 	<ul style="list-style-type: none"> No consequential increase in effort in adjacent areas Seasonal restriction on the use of FADs (1st August 30 September), and requirement to use FAD management plans Requirement to retain observer from Regional Observer Programme during FAD closure period, and 20% coverage rate outside FAD closure Full catch retention rules. <p><i>From 2010:</i></p> <ul style="list-style-type: none"> No fishing in high seas areas with the PNA area (high sea pockets see Figure 7), (confirmed end 2009) FAD measures extended (1st July 30 September). High Seas VDS to be considered. Full (100%) observer coverage
Longline	2008-01	<ul style="list-style-type: none"> Phased reduction in bigeye catches from 2004 or the 2001-2004 average (10% reduction in 2009; 20% in 2010; 30% in 2011) exception for Members catching less than 2000 tonnes during this period (for which catch limit is 2000 tonnes pa) for EU 2001-2004 average = 164 tonnes; EU catch can be increased to 2 000 tonnes pa 	<ul style="list-style-type: none"> No other specific measures mentioned.

Other fish stocks			
Fishery	CMM	Effort limit	Summary of other conditions
southern albacore, south of 20°S	2005-02	<ul style="list-style-type: none"> Option to choose highest level from number of fishing vessels in: (a) 2000-2004 average or (b) 2005 level. 	<ul style="list-style-type: none"> None specified.
northern albacore	2005-03	<ul style="list-style-type: none"> No increase from "current levels" (not specified in terms of days/vessels) 	<ul style="list-style-type: none"> Various reporting requirements, including vessel-days fished
striped marlin, south of 15°S	2006-04	<ul style="list-style-type: none"> Option to choose highest number of fishing vessels in any one year from 2000-2004 	<ul style="list-style-type: none"> Requirement to report number of vessels
sharks	2008-06	<ul style="list-style-type: none"> No effort limitations specified 	<ul style="list-style-type: none"> Requirements concerning fin quantities and utilisation of catches
swordfish, south of 20°S	2008-05	<ul style="list-style-type: none"> 3 107 tonnes for 2009 (specific limit agreed for EU)¹⁸ 	<ul style="list-style-type: none"> Various reporting requirements
swordfish, north of 20°N	2008-05	<ul style="list-style-type: none"> No increase from the current level of fishing effort (not specified in terms of days/vessels) 	<ul style="list-style-type: none"> As above

¹⁸ Likely to be complemented by a limit on the number of vessels authorised (14 for the EU) as per CMM-2009-03 and to apply as restriction to all WCPFC members, not just to the EU

CMM 2006-01, now superseded by CMM 2008-01, already constrained fishing effort by stating that « Beginning in 2007, CCMs shall take necessary measures to ensure that the level of purse seine fishing effort by their vessels in areas of the high seas does not exceed 2004 levels or the average of 2001-2004.»

➤ **Fishing Opportunities under Bilateral Agreements**

Access to the waters of the Federated States of Micronesia, and any other PNA, is subject to the terms and conditions in the Nauru Agreement Implementing Arrangements and the Palau Arrangement. As noted above, any effort limitation measures agreed through WCPFC do not need to be of concern because they are applicable to the coastal State but within that framework the coastal State can allocate fishing opportunities – within the Palau Arrangement rules for purse seine fishing – as it wishes.

The regulation of fishing opportunities under bilateral agreements therefore falls into two categories. For purse seine vessels, the Palau Arrangement VDS applies; for other fishing opportunities, the coastal State may allocate fishing opportunities largely on its own terms.

Purse seine fishing

In qualitative terms, fishing opportunities for purse seine vessels are in principle only available in terms of vessel fishing days (at least in relation to PNA countries, including FSM). Any allocation to EU vessels must come from within the coastal State's PAE – in the case of the FSM, this is 6,253 fishing days. Within the PAE, the EU fleet is in effect in competition with other fleets (except, in principle, the US fleet and other coastal State fleets, as allocations for these fleets were deducted prior to setting PAEs under the VDS). Quantitatively, the EU has to date been allocated rather limited fishing opportunities (previously in terms of number of vessels authorized (4)-, now as vessel days (103)). The reason for this is partly political, but also partly derives from the order of allocation priorities specified in the Palau Arrangement (as described above). Thus, in relation to (at least most) other DWFNs, the EU is at a disadvantage under the Palau Arrangement because under the allocation criteria, the EU is likely to fall into category (e) as a new entrant (i.e. last in order of priority), or best under category (d) (see page 22)¹⁹. Over time and as a result of careful negotiation, the EU might be able to advance its position, and therefore opportunities. It is possible that the VDS will make this easier, as there is greater scope for trading of vessel days. On the other hand, there is always the possibility it will remain secondary to more established foreign fishing fleets. There are no straightforward solutions to this impediment. Options might include, however:

- (1) Seek to take advantage of “transfer opportunities”. As noted above, the VDS presents new opportunities to transfer PAEs (or parts thereof) between Parties. This may present opportunities, with the framework of an agreement with FSM, to obtain vessel days allocated to another PNA under the condition however that the other PNA have some days allocation left aside.
- (2) Enter into a bilateral agreement which includes the provision of “locally-based foreign fishing vessels” (as defined in the Palau Arrangement – see above). As such vessels are treated with a higher level of priority than both new entrants and other foreign fishing vessels, this should in principle be a means to gain fishing opportunities, although of course the incentives for EU vessels are reduced. (It might also be recalled that the transfer of foreign vessels to locally-based foreign vessels was one of the initial objectives of the Palau Arrangement).
- (3) Negotiating a multilateral treaty, such as the US Treaty, under which the EU was removed from the VDS. Although this would not give rise to any right for a greater allocation (and there are still legal and political impediments to new entrant rights, such as the lack of defined allocation criteria within WCPFC and the capacity of existing fishing fleets), it may facilitate obtaining a larger share. However, there is a strong consensus amongst PNA country that the US Treaty should incorporate days allocation at least for conservation purpose to conform with WCPFC recommendations. It is therefore unlikely that they would accept a new form of multilateral Treaty that provides unlimited number of fishing days.

¹⁹ There is no official classification of flag's status under the Palau Arrangement orders of priority.

(4) Negotiating a multilateral treaty with all parties to the Nauru Agreement for the EU fleet to be able to pool fishing days across the EEZ of the parties. This strategy may be underpinned by the recent creation of a PNA secretariat whose objective is precisely to pool the fishing days allocation of the parties.

Longline fishing

The negotiation of fishing opportunities for longline fishing in principle has more flexibility than for purse seine fishing. In qualitative terms, FSM and the EU could in principle negotiate fishing opportunities on any basis, although in practice this would almost inevitably be in terms of vessel numbers (given that there is no TAC to allocate and no VDS). In quantitative terms, the general limitations of WCPFC measures apply (but again, in terms of fishing opportunities in waters under the FSM' jurisdiction, these limitations apply to FSM rather than the EU). Within the opportunities available for the FSM to allocate, the EU fleet will again be in competition with other fleets.

2.4.5. The Eastern Pacific Fishery: Status and Management issues

Since the EU tuna fleet share fishing effort between the WCP area and the Eastern Pacific Ocean (EPO) under the management of another RFMO (the IATTC), management and conservation rules adopted in the EPO bear consequences on the fishing strategy of the EU fleet. This section is intended to briefly review the main issues at stake in the EPO area and the likely consequences on the fishing possibilities available to the EU tuna fleet.

The most recent evaluation of yellowfin and bigeye populations indicates a yellowfin stock in a state of full exploitation and a bigeye stock exploited outside safe limits. At present, the whole purse seine fleet active in the EPO is well above the recommended fishing capacity²⁰. Purse seine capacity limit applying to the EU is equivalent to 4 purse seiners. Incidentally, it is those same 4 EU tuna purse seiners that fish in the WCP area.

The main management tool in force in the EPO is a seasonal closure of the purse seine fishery. In 2007, the closure lasted approximately 1.5 month during the second half of the year. Given the need to further reduce the catches, the scientific committee recommended in 2008 an extension of the seasonal closure to 12 weeks (approx. 2.5 months) for the entire EPO with an additional closure of an offshore area located East of Galapagos for a period of approx. 3.5 months. During the 79th meeting of IATTC in 2008, the parties could not reach consensus and as a consequence, no management measures have been adopted for 2008. At the 80th meeting of the Commission held in June 2009, IATTC staff tabled the same recommendation and the parties could finally agree on a 59 day closure in 2009, increased to 62 days in 2010 and 73 days in 2010. As concerns the closure of the offshore area off Galapagos, the parties could only agree on a 1 month moratorium, as opposed to the 109 days proposed by IATTC. According to IATTC, these measures will nonetheless lead to reduce fishing effort by 20% over the next three year.

Additionally, IATTC regulates purse seining on tuna associated with dolphins to set incidental dolphin mortalities in the tuna purse-seine fishery in the Agreement Area to levels approaching zero, through the setting of annual limits. Association of tuna schools with dolphins is fairly frequent in the EPO unlike in the other oceanic regions. Furthermore, IATTC imposes full retention of catch (no discards) and 100% observer coverage of the larger purse seiners (includes all the EU purse seiners) predominantly to monitor incidental catch of dolphins but also to collect scientific data and to monitor compliance with IATTC management and conservation measures.

²⁰ In May 2008, the carrying capacity of the purse seine fleet in the EPO was 228,246 m³. While Resolution C-02-03 on the limitation of fishing capacity has limited entry to the fishery, there is still some room for some additional vessels to enter the fishery within the limits of the Resolution. The IATTC staff recommends that the Commission examines means to reduce the fleet size toward the Commission target of 158,000 m³ (-30%). Meanwhile, the main management tool used to limit fishing mortality is seasonal closure.

These recent evolutions of the IATTC management framework tend to confirm that the fishing possibilities available to the EU purse seine fleet in the EPO area are bound to decrease substantially in the forthcoming year, although at a slower pace than proposed by the IATTC staff.

2.5. Focus on activities of EU fishing vessels in the WCP area

At present, the European Community has three ongoing Fisheries Partnership Agreements in the WCP area, namely with Kiribati, Federated States of Micronesia and Solomon Islands. These three partner countries are part of the eight parties to the Palau Arrangement. The following map shows the EEZ covered by these three FPAs. Beside these three FPAs, the Spanish purse seine shipowner association has reportedly concluded private agreements to secure access for its purse seine fleet to the EEZ of Tuvalu and to the EEZ of Nauru²¹, two other PNA countries. Cumulatively, the EU purse seine fleet can access the EEZ of a subset of 5 countries of the 8 PNA group.

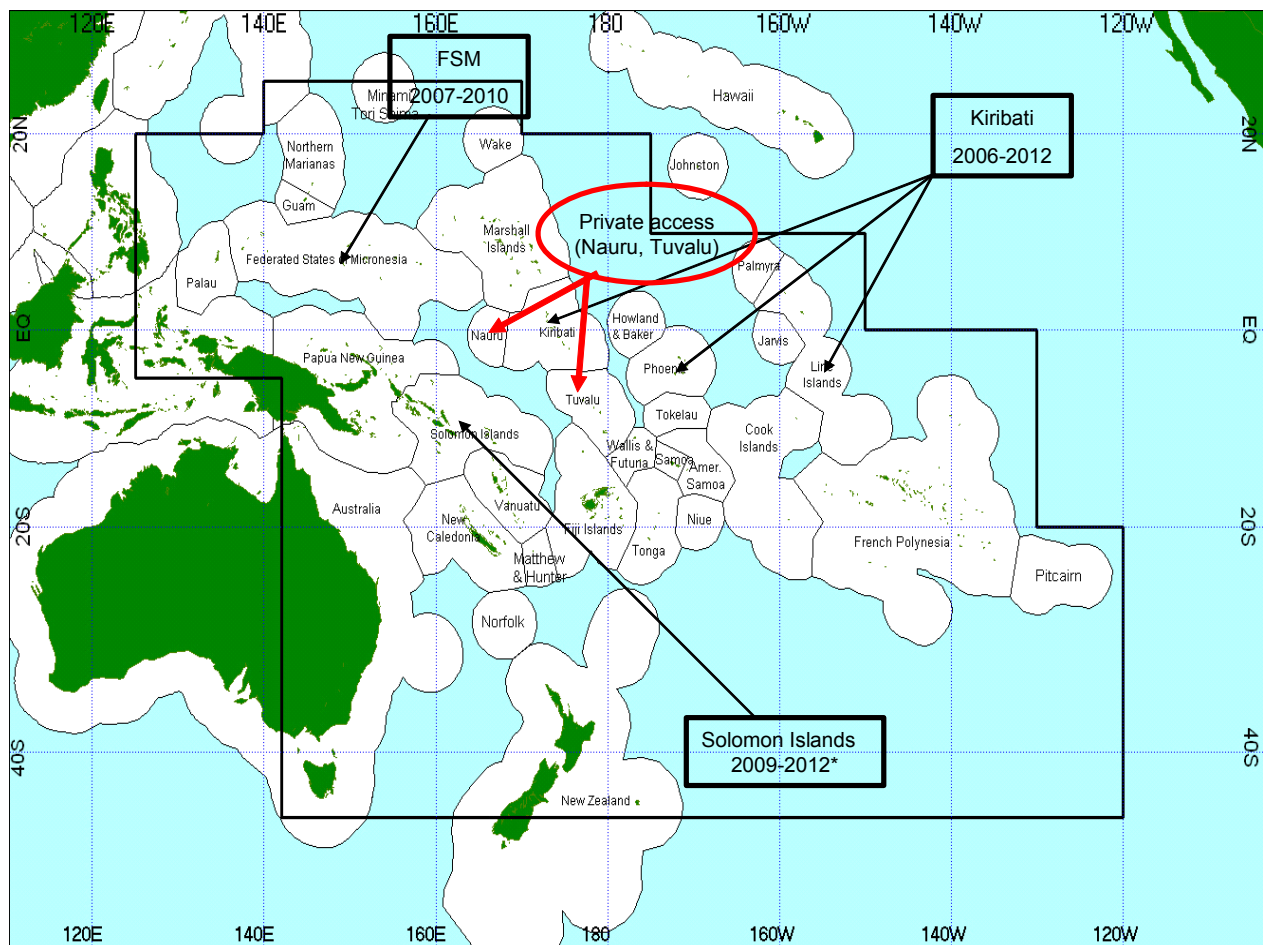


Figure 9 : Existing fisheries partnership agreements in force as of end-2009 between Pacific countries and the EU (*: the agreement with Solomon Islands is applied on a temporary basis until it is ratified by both parties) and privately negotiated access

All these three Community agreements and the two private fishing agreements include fishing possibilities for purse seiners. Surface longliners have fishing possibilities under the EU agreement with Kiribati. The first protocol annexed to the FPA with Solomon Islands included fishing possibilities for longliners, but these have been discarded in the second protocol initialled end of 2009.

²¹ Information obtained during the mission and later confirmed by the European professional association concerned.

2.5.1. Purse seiners

As outlined in the previous sections, the EU purse seine fleet is a minor operator in the WCP area. With only three to four vessels active and catches below 20,000 tons per year on average (although following an increasing trend), the Community purse seiners represent around 1% of the total purse seine fishery dominated by fleets from Asia and from Pacific Island countries. The following graph demonstrates that the main fishing grounds of the European purse seine fleet remain the Indian Ocean (70% of the 400,000 tonnes caught annually by the EU purse seiners worldwide), preceding the Atlantic Ocean (22%). Catches in the whole Pacific Ocean represent only 8% of total Community purse seiners catches.

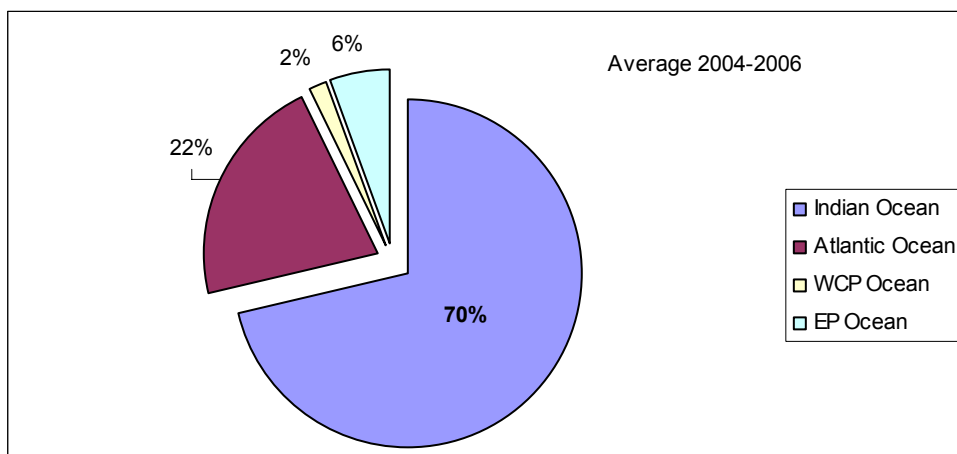


Figure 10 : Distribution of catches of the EU purse seine fleet between the main oceanic regions. Source: RFMO data

As shown by the following map, activities of the EU purse seine fleet took place in 2007 in the Eastern part of the WCP in international waters and in the EEZ of Kiribati where there the EU concluded a fishing agreement. In 2008, fishing operations moved clearly westward. The activities of the European purse seiners fall under the area of competency of two RFMO: the IATTC for the Eastern Pacific Ocean and the WCPFC for the Western-Central Pacific Ocean. Exploitation of tuna resources in this area occurs when fishing in the Eastern Pacific Ocean is not possible (time - area closures) or when catches are low (such as in 2007 and 2008). The strategy of the EU purse seine fleet is primarily to supply the Ecuadorian canneries in which Spanish nationals have shares, but also to supply canneries based in Pago Pago (American Samoa) and even Bangkok (Thailand). So far, there has not been any Spanish investment in processing factories located in Pacific Island Countries.

As the following map suggests, EU purse seiners fishing grounds were far from the FSM EEZ in 2007 and 2008.

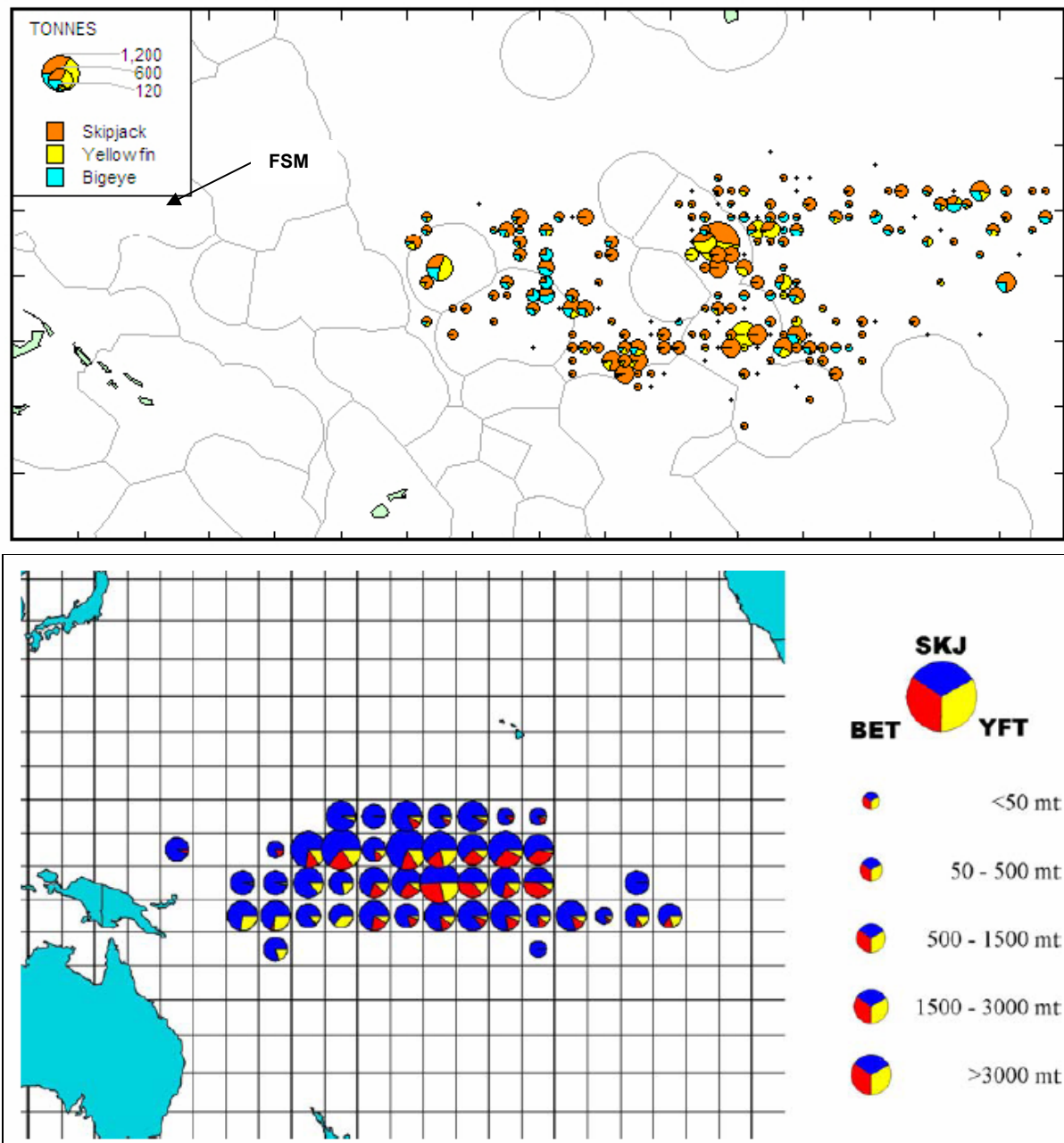


Figure 11 : Distribution of Spanish purse seine catches in 2007 and 2008. Source : SPC for 2007, IEO for 2008.

The operations of the fleet extended westward in 2008 with some catch declared in the Solomon EEZ (630 tonnes) accompanied by a substantial increase of catch in the EEZ of Kiribati. No catch have been taken from the EEZ of FSM as the Spanish purse seiners could never obtain a licence from FSM Authorities contrary to the dispositions of the fishing agreement. Activities in the High-Seas under competency of WCPFC also increased. This is demonstrated by the following table that shows the evolution of catch under the three existing FPAs as well as in all the WCP area (EEZ and high seas). The total EU WCP total catch made in 2008 (36,205 tonnes) are a new record and close to catch of the Spanish purse seine fleet in the Atlantic in 2007.

Table 9: Evolution of the catch of the EU purse seine fleet in the three EEZ of third countries having signed a FPA (source : DG MARE) and total catches in the whole WCP area (EEZ as above high seas ; source SPC)

Tonnes	2004	2005	2006	2007	2008
Solomon Islands			0	0	627
Kiribati	624	607	2 799	8 671	12 269
FS Micronesia				0	0
Total EEZ under FPA	624	607	2 799	8 671	12 896
All WCP area	5 519	3 432	10 862	19 747	36 205

For the future, the European purse seine shipowners declare having a need to retain an access to the WCP area. The main reason is that the evolution of the management and conservation framework in the Eastern Pacific may lead to reduce significantly the fishing possibilities if the seasonal closures are to be adopted as proposed by the IATTC (2.5 to 6 months per year), notwithstanding the restriction on fishing tuna associated with dolphins. The EU shipowners have already anticipated that by creating a transshipment base on Christmas Island in Kiribati. The location of this base is central and adapted to deploy westward in the WCP area and eastward in the EPO area.

It should also be known that the activities of the purse seiners under the EU flag represent only a part of the Spanish deployment strategy in the WCP area. Spanish interests reportedly control also purse seiners under the Ecuador flag (7), Salvador flag (2) as well as two vessels flying the flag of Kiribati (one purse seiners and one pole & liner). Catch of those vessels are used mostly to supply the Spanish co-owned canneries located in Central America.

2.5.2. Longliners

The activities of the European longliners operating in the Pacific Ocean take place primarily south of 20°S, outside the tropical area, where the swordfish resource is more plentiful. The fishing grounds overlap the area of competency of both IATTC and WCPFC. As shown in the two following maps, catches in the WCP originate essentially from the high seas East of New Zealand or from the EEZ of French Polynesia but mainly as a continuation of fishing activities in the Eastern Pacific area.

Starting in 2003 the EU fleet, consisting in 10-15 surface longliners, made an attempt to expand its fishing grounds towards zones in the Central South Pacific, with the area around 120° W becoming a new fishing zone, as an alternative to supplement the traditional grounds located closer to the South-America mainland in the SE Pacific. In 2004 and 2005 experimental fishery activities were undertaken in areas located in both the North and South Pacific, within the WCPFC convention area. These experimental fishery activities involved the development of fishing patterns that were different from those used in routine commercial operations. Over the course of this activity, substantial differences were found in terms of the prevalence among the species caught, in both the target species as well as the bycatch species. The EU longliners returned to their traditional fishing grounds after estimating that the continuation of their usual fishing strategy targeted on swordfish and oceanic sharks is more adequate than trying to enter and compete on the equatorial longline fishery for sashimi or albacore dominated by Asian interests.

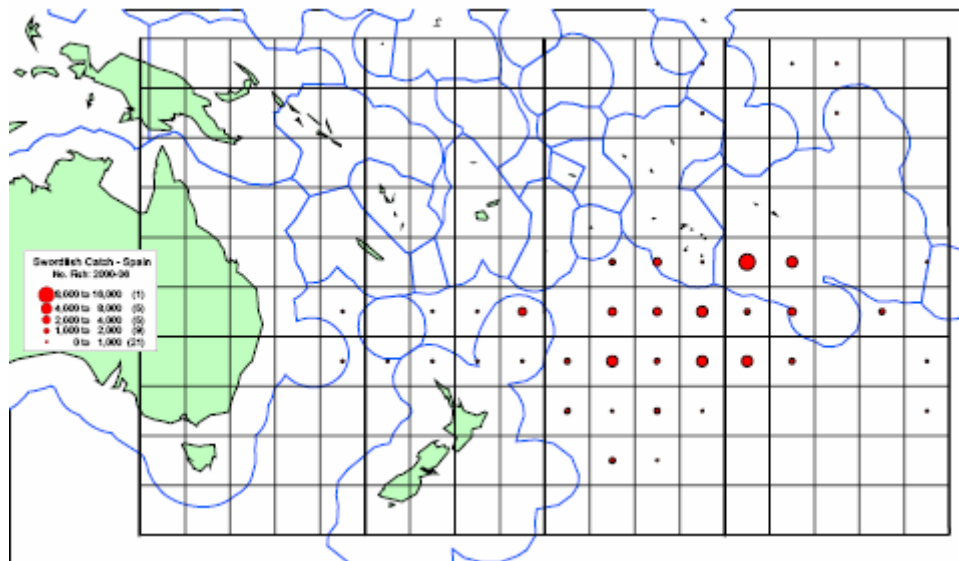


Figure 12 : Distribution of Spain swordfish catches 2000-2006. Source : WCPFC

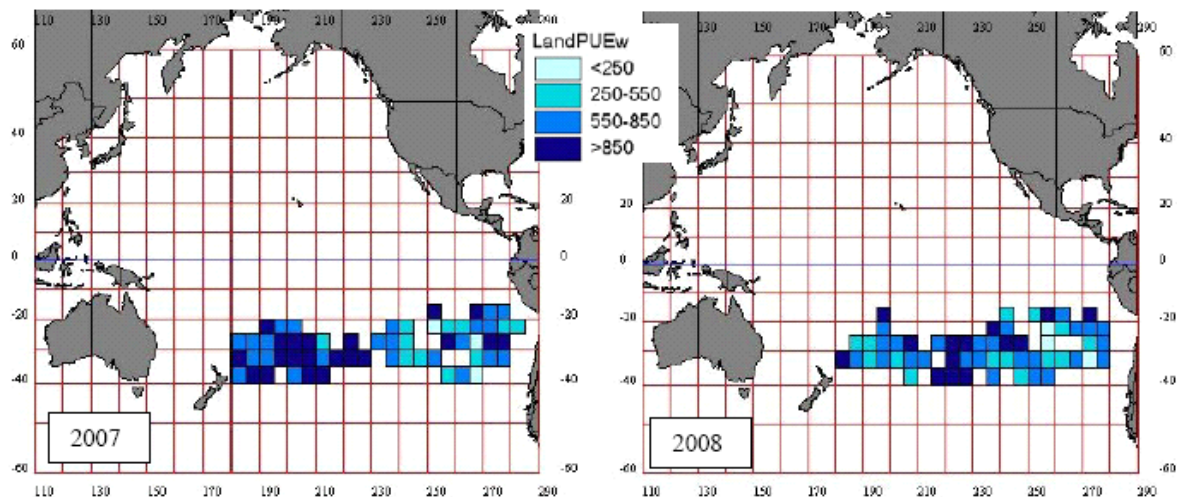


Figure 13 : Distribution of catch per unit effort of the Spanish longline fleet in 2007 and 2008. Source : IEO

It is therefore unlikely that there could be an interest for future surface longlining possibilities in the tropical area including the FSM EEZ given current fishing patterns. However, Spain submitted a request for 13 surface longline licenses under a new protocol of agreement with FSM. This may suggest that a new fishing strategy is considered in the WCP area, with vessels exploiting the tropical zone probably focusing mostly on yellowfin and bigeye. The professional association grouping Spanish longliner has been contacted to confirm but did not respond.

2.6. The tuna fisheries under the competency of FSM

2.6.1. The Domestic tuna fishery

The number of tuna vessels flagged to FSM varied between 6 (2006) and 23 (2004), with 20 fishing vessels reported active in 2008. This number includes 15 longliners and 5 purse seiners. There are no pole and liners flagged to FSM. The fishing vessels are mostly property of joint ventures involving FSM investors (public and private) and Asian operators.

Table 10 : Number of FSM Purse-Seine and Longline vessels active vessels in the WCP Area. Source: NORMA

	2004	2005	2006	2007	2008
Longline	17	10	3	13	15
Purse seine	6	6	3	4	5
TOTAL	23	16	6	17	20

The total catches of the FSM flagged tuna fleet was below 20,000 tonnes over the recent period. Catches are usually unloaded in FSM. Fish caught by longline vessels are usually landed in the FSM with some processing before being air freighted to the Japanese fish markets as chilled fish. Bycatch is frozen and exported to the USA by sea. Fish caught by purse seine vessels is usually frozen and transferred to carrier ships that take the frozen fish to canneries in a variety of locations including Pago Pago and Bangkok. Vessels fishing in FSM waters are required to transship in authorised ports, so that catches and fishing license requirements can be monitored, but the fish are not processed or landed in the FSM.

Table 11 : Annual Catch (tonnes) and effort for FSM tuna fleet. Source : NORMA

		2004	2005	2006	2007	2008*
Longline	Catches	890	297	445	1 960	1 193
	Effort (days)	2 351	281	184	337	2 482
Purse seine	Catches	27 000	27 457	9 636	13 497	17 656
	Effort (days)	1 381	1 222	8 545	12 004	15 245
TOTAL	Catches	27 890	27 754	10 081	15 457	18 849

* provisional

2.6.2. The Foreign tuna fleet in FSM waters

➤ Fleets

In 2008, a total of 296 foreign longline, pole and line and purse seine fishing vessels were licensed to fish in the FSM EEZ. By gear type, longliners accounted for 105, pole and line 25, and purse seiners 166.

For the purse seine foreign fleet, the major partners of FSM have been Taiwan, Japan and Korea with each 30-35 purse seiners licensed to fish in the FSM EEZ per year. In 2008 and as a consequence of the rebuilding of the US purse seine fleet, 32 US purse seiners were licensed, as opposed to 20 and less the preceding years. Logically, no EU Member State (e.g. Spain) appears in the list of purse seiners licensed to fish in the FSM EEZ as licences applications have been denied.

For the two other fishing categories, Japan and Taiwan represent the bulk of the longline fleet licensed to fish in the FSM EEZ (targeting mainly yellowfin and bigeye for the sashimi market), while Japan is the only flag licensed to exploit canning grade tuna species with pole and line. No EU Member State flag is included in the list but this is because EU longliners did not apply for a licence in the EEZ of FSM.

Table 12: Number of foreign vessels licensed to fish in the FSM EEZ by flag and by gear type. Source : NORMA

Flag	2004	2005	2006	2007	2008
Purse seiners (PS)					
China	8	8	9	10	11
Japan	34	34	36	35	35
Korea	28	27	28	28	30
New Zealand	4				
Taiwan	34	33	34	34	38
Vanuatu	11	8	8	14	15
USA	22	14	13	21	32
PNG	9	2	4	10	
Kiribati	1		1	1	
Marshall Islands	3	1	2	4	5
Philippines	1				
Neth. Antilles			1	1	
Solomon Isl.			2		
Sub-total PS	155	127	138	158	166
Longliners (LL)					
Belize	2	2			
China	27		8	11	7
Philippines		1	1		
Japan	88	104	78	66	58
Taiwan	69	31	38	27	40
Vanuatu	9				
Sub-total LL	195	138	125	104	105
Pole and liners (PL)					
Japan	30	37	26	8	25
Sub-total PL	30	37	26	8	25
TOTAL	380	302	289	270	296

➤ Catches

Catch of foreign purse seiners in the FSM EEZ are usually extremely high, between 150,000 tonnes and 220,000 tonnes per year, i.e. 10-15% of total purse seine catches in the WCP area. The Taiwan purse seine fleet and the Japan purse seine fleet have been traditionally at the origin of most catches in the EEZ of FSM. The 2008 total catch by purse seine gear type within the FSM EEZ is recorded as 35,203 tonnes. The purse seine total catch has the most impact over the total EEZ catch and the major decrease in fishing effort for 2008 by all the purse seine fleets marks a historical fall of EEZ total catch of less than 50,000 tonnes. Over the last decade, the purse seine total catch within the EEZ has fluctuated between 50,000 to 200,000 tonnes with an overall average of 139,000 tonnes annually over the past 13 years. The purse seine total catch for the EEZ for 2008 marks the lowest catch ever recorded, certainly over the past 13 years.

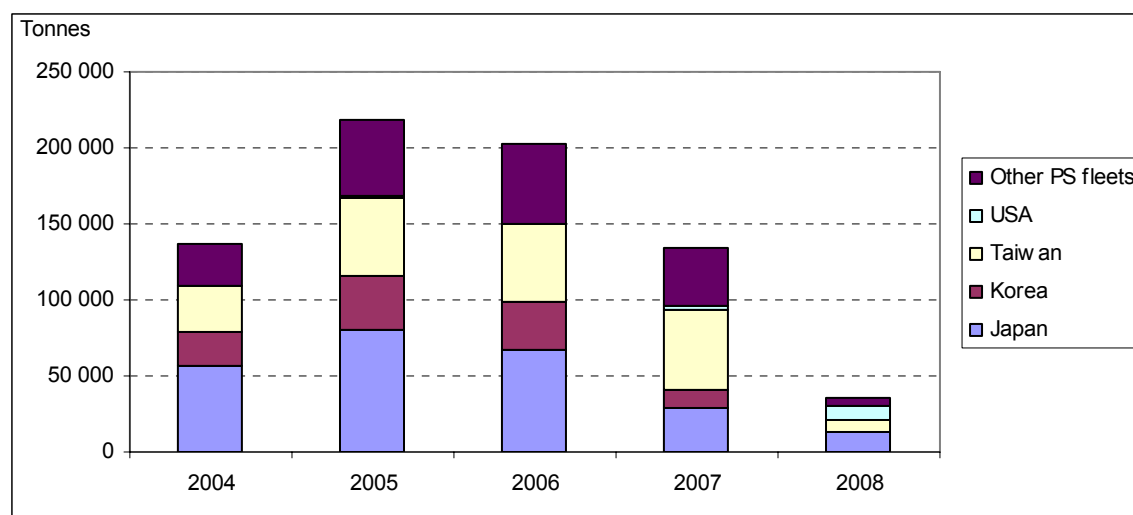


Figure 14: Purse seiner fleet catches in the EEZ of FSM. Source: NORMA

The total longline catch targeting yellowfin and bigeye tuna in the FSM EEZ by the four fleets was 1,632 tonnes. By flag, Japan accounted for 22% (364 tonnes) of the total catch while the Pohnpei based Chinese longline fleet accounted for 17%. The catch of the domestic based- Taiwan longliners also declined accounting for 17% while FSM accounted for the most of 44% or 705 tonnes. Alike purse seine catches, the 2008 longline catches in the EEZ are an all time low. The longline catch level in the FSM EEZ was around 5,000 tonnes per year since 2000.

The historical low level of catches in the EEZ of FSM for 2008 is mirrored by a low level of fishing effort (the purse seine fleet reported 1,236 days fishing in the EEZ in 2008 as opposed to between 5,000 and 7,000 days the previous year). Given the overall level of catches in the WCP area in 2008, this dramatic drop in fishing activities in the EEZ of FSM implies that the purse seine fleet deployed increased activities in other parts of the WCP. The reason for this shift yet remains unclear.

➤ Port activities

As a general rule, transshipment at sea by purse seiners is prohibited subject to specific exemptions²². The measure is part of the WCPFC convention (art. 29) that entered in force in 2004, and also part of the FFA minimum terms and conditions applicable to purse seiners. As a consequence, all transshipment / unloading operations have to take place in designated ports under the supervision of control officers and subject to payment of fees.

FSM are one of the main transshipment base in the WCP area, with Pohnpei as the main single transshipment port.

According to provisional data, the 2008 purse seine unloading volume was at least 111,819 tonnes from 157 vessels (162 in 2007). This is 19,657 tonnes less than the total unloaded volume reported for 2007 for FSM. Pohnpei port has remained the only active purse seine transshipments port during the last five years. The majority of the vessels were flagged to Taiwan (83 units) that transhipped 51% of the FSM total transshipment volume. The statistics record also 9 Chinese flagged purse seine vessels that transhipped approximately 7%. The FSM flagged vessel unloaded approximately slightly less than 14% of the total, and the Korean vessels only 5% (18% in 2007). Tuna transhipped in FSM are not used locally. They are sent to other places where they are processed into cans (Pago Pago in American Samoa or Bangkok in Thailand). There is no canning processing unit in FSM and it is likely that there will not be any in a foreseeable future. The reason is that the country has too many

²² End of 2009, the WCPFC drafted a project of CMM (CMM-2009-06) to precise the scope of these specific exemptions. According to the current draft text, the EU purse seiners active in the WCP area do not qualify for these exemptions

competitive disadvantages compared to PNG or Solomon Isl. for example (remoteness, no local supply, insufficient workforce base, higher wage level), and even more compared to Thailand.

Concerning port activities related to longlining, NORMA recorded a total of 306 transshipping / unloading operations from 36 vessels. The volumes transhipped in 2008 are slightly in excess of 2,000 tonnes, including mostly bigeye tuna and yellowfin tuna. Contrary to purse seine transshipments, longline catches undergo some processing in FSM, although minimal, before being air-freighted to Japan. Catches unfit for the sashimi market are exported frozen to the USA.

2.6.3. Access agreements concluded with other flag States

➤ Bilateral access agreements

FSM Authorities conclude a number of bilateral access agreements with foreign associations of vessels owners of Japan, Korea, Taiwan, China, and with the European Community.

Some detailed information could be obtained on two recently negotiated fishing agreements, one between FSM and three Japanese fishing associations, and one between FSM and a Taiwanese Purse seine association.

Agreement between Japan Tuna Fisheries Co-operative Association, National Offshore Tuna Fisheries Association of Japan, Japan Far Seas Purse Seine Fishing Association and NORMA

This agreement entered into force in July 2009 for a period of ten years for up to a combined 157 Japanese tuna vessels. It includes three types of fleets: purse seiners, longliners and pole and liners.

- For purse seiners, the agreement considers introduction of a maximum 35 vessels with an annual licence fee set at USD 133,000 (≈ € 95,000)
- For pole and liners, the agreement foresees introduction of a maximum 27 vessels with an annual licence fee of USD 28,000 (≈ € 20,140)
- For longliners, three categories are included: 60 longliners of less than 20 GT with a licence fee of USD 25,000 for one year (≈ € 18,000), 25 longliners of more than 20 GT with a licence fee of USD 30,000 (≈ € 21,500), and 10 large longliners with ultra low storage facility for a fee of USD 36,000 per year. Longliners can obtain licences for shorter period of time (6 months or 3 months) but with higher fee base.

In addition, each vessel has to pay an application fee of USD 600 (≈ € 430) and an observer fee of USD 3,000 (≈ € 2,200). The Japanese associations agreed also to contribute up to JPY 50 million (≈ € 385,000) for the provision of goods and services to FSM. In total, the newly signed fishing agreement may bring an expected revenue slightly in excess of USD 9 million (≈ € 6.5 million) to FSM. This agreement with lumpsum payments will replace the existing one which runs with calculation of fees on a per vessel per trip basis.

There are no details on the conditions governing the activities of the Japanese fleet in the EEZ of FSM. Nonetheless, the agreement is reportedly accompanied with a set of reporting weekly obligations, observer and VMS monitoring.

Coincidence or not, the Japanese Government decided in January 2009 to offer to FSM a JPY 200 million “non-project” grant (≈ € 1.5 million) not tied to a specific project and that can be used for purchase of a variety of eligible goods and services. FSM intention is to use this grant to purchase fuel primarily.

Agreement between the Taiwan Deep Sea Tuna Purse Boat-Owners and Exporters Association and NORMA

The agreement was initialled in April 2009. It covers access for 32 purse seiners plus provisions for an additional 2 vessels for a period of 5 years. This agreement is the first negotiated by FSM that will

implement the Vessel Days Scheme by allocating days, establishing the value of a fishing day and options for requesting additional days when the allocated days are fully expended during the agreement period.

The Agreement with Taiwan allocates a total of 1,536 fishing days for the 32 vessels during each year (*i.e.* 48 fishing days per vessel). For the two additional vessels that will join the fleet within six months, an additional 96 days is added for a total of 1,632 days. The value of a fishing day is fixed at USD 2,000 (\approx € 1,440) for up to 2,000 days. The minimal expected access fee is therefore worth USD 96,000 per purse seiner (\approx € 69,000). If the fleet requests additional days beyond this limit, each additional day will be charged USD 2,500 (\approx € 1,800).

In addition, each vessel will have to pay a management fee of USD 2,500 per year (\approx € 1,800) and a Development fee also of USD 2,500 per year.

The conditions associated with fishing in the EEZ reportedly implement the elements of the Nauru Agreement including FAD measures, full retention scheme, closure of high-seas pockets and 100% observer coverage.

Agreement with the European Community

The agreement is negotiated for a maximum of 6 purse seiners and 12 longliners without limits on catches (the reference tonnage of 8,600 tonnes can be exceeded).

Each EU purse seiner has to pay an advance payment of € 15,000 equivalent for the fees due for 428 tonnes of tuna. The licence fee for an EU longliner is € 4,200 equivalent for the fees due for 120 tonnes of tuna. Each additional tonne caught is charged € 35. EU vessels have to pay each a € 500 contribution to the Observer programme, plus a € 250 licence application fee. Considering the contribution of EU shipowners and payments from the Community, each tonne of tuna caught in FSM EEZ under the agreement is worth € 100 (€ 35 borne by shipowners, € 65 borne by the Community). This represents 13% of catch value in 2006 and almost 10% in 2007 and 2008. For EU longliners, the contribution negotiated under the agreement represents less than 3% of the catch value.

Other access conditions to the EEZ of FSM are broadly identical to those imposed across all EU tuna agreements. The Protocol attached to the FPA stipulates that EU fishing vessels shall undertake to employ FSM nationals onboard, or to pay a lump sum equivalent to the wages of two crew members without any further technical or financial details.

No such detailed information could be obtained on the other fishing agreements concluded between FSM and the fishing entities other than Japan, Taiwan (purse seine) and the EU. These other agreements include a series of small agreements concluded with longlining entities and a broader (30 vessels +) agreement concluded with Korea worth USD 2.5 million per year.

➤ Multilateral agreements

Multilateral Treaty on Fisheries between Certain Governments of the Pacific Island States and the Government of the United States of America (commonly referred to as the "US Treaty")

Negotiated for the last time in 2003 until 2013, the US Treaty provides access to a maximum of 40 purse seiners to the waters of the 16 Parties²³ to the Treaty. The structure of the US Treaty is summarised below. The US Party pays a total of USD 21 million per year including USD 18 million paid by the US Government on the USAid budget²⁴ and USD 3 million paid by the US shipowners independently from the actual catches or number of active vessels. The value of the US Treaty is reportedly indexed on tuna ex-vessel prices. These amounts are disbursed as follows:

²³ The parties are the 8 Parties to the Nauru Agreement - the PNA - (Micronesia, Kiribati, Marshall Isl., Nauru, Palau, Papua New Guinea, Solomon Islands and Tuvalu) plus 8 other non-PNA Pacific countries (Australia, Cook Islands, Fiji, New Zealand, Niue, Samoa, Tonga, Vanuatu).

²⁴ Managed by the Bureau of Oceans and International Environment and Scientific Affairs (OES), Dept of States

- First, an administrative budget is deducted from the total amount (approximately USD 500,000) for FFA Treaty administration;
- Second, Project Development Funds are deducted from the balance. Currently, the Fund totals USD 2.5 million annually. This money is distributed equally among the Pacific Islands and is made available upon project requests;
- From the remaining balance, 15% is distributed equally among all Pacific Islands, 85% is distributed according to where the catch is made (i.e. those countries that incur greater fishing pressure get a greater share of the 85%).

The Forum Fisheries Agency, along with the Treaty depositary (the Government of PNG) are responsible for the completion and circulation of the agreed upon Treaty text. It is not currently in the public domain.

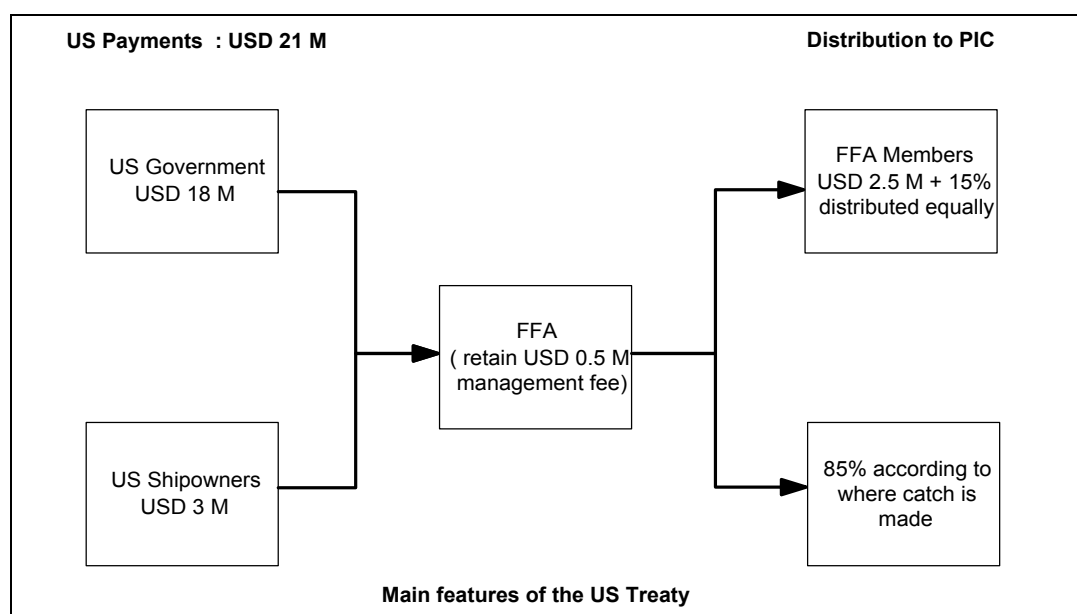


Figure 15 : Structure of the US Treaty

In addition, the US industry pays the equivalent of USD 164,000 per year as a contribution to the FFA observer fund. This contribution is the result of a formulae based on an observer coverage of 20% of the fishing trips realised by the US purse seiners²⁵ in the waters of the PNA.

Several factors have decreased the number of US purse seine vessels operating in the WCP area from an average of approximately 40 per year in the 1990s, to only 13 in 2007. Catches of the US fleet in this last year have been approximately 72,000 tonnes, putting the value of the agreement at an estimated 19% of the value of the catches. However, the US fleet is currently in a rebuilding phase (39 US purse seiners were reportedly active in the WCP area in 2008-2009 including 14 which are brand new²⁶) with catch of 205,000 tonnes reported to WCPFC. On that basis (21 millions USD for 205,000 tonnes), the multilateral agreement is worth USD 100 per tonne (€ 69 per tonne), i.e. equivalent to 69% of the price per tonne paid by the EU, with also a different balance between private and public funding (14% private - 85% public for the US Treaty, 35% private - 65% public for the EU fisheries agreements).

The parties to the Treaty meet annually to monitor the implementation of the multilateral agreement. The 21st Annual Consultation between the Pacific Island Parties and the United States was held in March 2009.

According to a communiqué published by FFA, outcomes of the consultation included:

²⁵ The formulae has been reportedly revised recently but it is not in the public domain.

²⁶ Source : FFA Trade News, March April 2009.

- The US confirmed the application of recently agreed measures by the Parties to the Nauru Agreement and the Western and Central Pacific Fisheries Commission (such as high seas pockets closure, periodic FAD bans, 100% observer coverage and catch retention) to its fleet. However, further discussions will continue between the US and the Pacific Island Parties on how these measures will be implemented within the framework of the US Treaty.
- The US agreed on the normal budget to cover observer coverage on US vessels and further discussion is on-going on the budget needed for the 100% observer coverage during the periodic FAD closure in the 2009/10 licensing period that commences in June 2009.
- The US and Pacific Island Parties agreed to further cooperation on catch and effort data sharing and port sampling.
- The US agreed that the FFA/VMS MapInfo baseline coordinates for the Pacific Island Parties are to continue to be used for the purpose of the Treaty, including for enforcement work arising under the Treaty, until such coordinates are officially varied by the respective Parties.
- Renegotiation of the Treaty for a new arrangement beyond 2013 when the current Treaty arrangement will lapse, will commence in late 2009 between the Pacific Island Parties and the US.
- The US agreed that the list of US fleet vessels, with names of ships, licence holders and other basic details will be made publicly available on the web
- The next annual consultation will be in March 2010.

Issues still to be resolved include whether or not the Pacific Island Parties and US will agree on application of the Vessel Day Scheme to the US fleet and the number of fishing days the US fleet will receive. The Treaty is due to end on 14 June 2013 when a new treaty or other kind of arrangement will have to be negotiated for the US to fish in Pacific Islands' waters. Renegotiation of the Treaty and discussions about the new scenarios started in late 2009.

From the perspective of Pacific Island Countries, the US Treaty raises a lot of concern. The first issue is that the unexpected revival of the US purse seine fleet from 13 vessels up to its maximum number allowed (40) within one year or so is in effect due to reflagging of mostly Taiwan-controlled vessels previously under the flags of Pacific Island Countries as a strategy to obtain unlimited access to all the EEZ under the Treaty, and to bypass the stringent fishing day quota offered under VDS for conservation purpose²⁷. This opportunistic redeployment is seen as unfair since *i)* the purse seine vessels concerned by reflagging are vessels that previously committed to become domestically based and were accordingly granted favourable access conditions (FSM arrangement) and *ii)* the purse seiners operating under the US Treaty are not constrained by the Vessel Days Scheme until it can be incorporated in the agreement. Forty US purse seiner operating 250 days a year could potentially exert a US fishing effort of nearly 10,000 days in PNA EEZ while only 3,362 days have been accounted for in the calculation of the initial TAE (see section 2.4.2 page 23) according to WCPCF resolution of capping purse seine fishing effort to 2004 level.

2.7. Enforcement of conservation and management measures

2.7.1. Background

All fishing fleets operating in the WCP regulatory area have to comply with the management and conservation measures adopted by the WCPCF, whether in the high seas or in EEZ of Coastal States, and also with the additional or complementary specific management and conservation measures that the Coastal States may have adopted as part of their Legal framework or as part as the specific conditions attached to the licence issued. The compliance and control measures include *inter alia*:

- Good Standing on the FFA register
- Control and Monitoring of transshipment (forbidden in the high seas and in fisheries zone, permitted only in designated harbours unless authorisation is granted to process otherwise)

²⁷ Reflagging has been made possible by relaxation of the rules of membership to the US Tuna Boatowner Association possibly motivated by the threat of losing unused negotiated rights.

- Submission to Coastal State of logbooks in the zones and in the high seas (the latter obligation is part of the licensing conditions)
- Vessel reporting requirement (Entry - Exit; weekly notification of catch, harbour prior notification)
- Observers and observer coverage
- Appointment of a local agent
- Vessel monitoring system (VMS reporting)
- Area closure.

While it remains the competency of coastal countries to enforce the applicable regulations in the waters under their jurisdiction, FFA plays a central role in facilitating enforcement of existing conservation and management measures at regional level and fight against IUU fishing. The following paragraphs detail the main tools developed by FFA in this respect.

- **Vessel register:** FFA maintains a register of fishing vessels²⁸ authorised to fish in the EEZ of its Member countries. Vessels wishing to engage in fishing activities have to submit an application to FFA and pay registration fees (in 2009, USD 2,448 + USD 800 if the vessel is to fish in the EEZ of the PNAs). Registration is valid for one year. No foreign fishing vessel shall be issued with a fishing licence unless the vessel and its operator have good standing on the FFA Vessel Register (i.e. the vessel has a good record of compliance with MTCs, including VMS - see below - catch reporting, transshipment rules) and the vessel is registered on the WCPCF record of Fishing Vessels. As from March 2010, there were 4 EU purse seiners and 3 EU fish carriers on the FFA register of vessels in good standing. No EU longliners were present on the FFA register.
- **VMS:** FFA pools all VMS position of authorised fishing vessels in the WCP area. As part of the MTCs, all authorised vessels have to be fitted with an FFA-approved Automatic Location Communicator which sends VMS position a regular interval of time (1 hour for fishing vessels, 4 hours for other types of vessels). Coastal countries member of FFA have real time access to these VMS data for fishing activities falling under their competency, i.e. fishing vessels flying their flags wherever they operate, and fishing vessels in the waters under their jurisdictions. For the EU, VMS monitoring concerns potentially the Spanish purse seine and longline fishing fleets, but also 2 fish carrier vessels flying the flag of Malta and another carrier vessel flying the flag of Spain that have been registered with FFA. In total, the fishing fleet and associated fleet monitored by FFA (as of March 2010) includes more than 1,216 vessels, comprising 30 bunker vessels, 132 fish carriers, 796 longliners, 227 purse seiners and 28 pole and liners. FFA ensures that all ALC work properly and provide the required information, and if not, liaise with shipowners to rectify the situation. Vessels having a poor record of VMS transmission may be removed from the list of vessels in good standing and therefore not eligible for a fishing license in Member country EEZ. Monitoring of the fleets in the EEZ remains the competency of the Coastal States which use the VMS information for control and surveillance purpose as appropriate.
- **Observers:** FFA runs an observer training programme and coordinates deployment on fishing vessels according to coverage rates agreed. It is up to each country to recruit and pay its own observer corps and provide observers as and when needed.
- **Joint Patrols:** FFA facilitates the organisation of joint surveillance operations. Under operation "Bigeye" north of Equator and operation "Kurukuru" in the southern latitudes, seaborne and airborne patrol resources of Member countries are pooled²⁹, with additional control means provided by Australia, New Zealand, France (mainly planes) and USA (mainly cutters). Operations include planning and preparation, training and information gathering, data sharing procedures, operational phase with coordination of national headquarters from a central ops room often located in FFA HQ, and debriefing. Funding of these operations

²⁸ A per FFA definitions, a fishing vessel includes any vessel that catch fish or support catching activities. This definition encompasses therefore fish carriers or any type of support vessels in addition to real fishing vessels

²⁹ Australia has provided three Pacific Patrol Boats worth € 11 million to FSM and continues to support its maritime surveillance through assistance with a bilateral Defence Cooperation Program.

originate frequently from the Australian Defence. Budgets are used mostly to support running expenses of coastal countries (supply of fuel for the patrol vessels). Each joint operation costs in the region of € 350,000. Developed countries cooperating in these joint deployment operations bear their own costs.

- **Legislation strengthening:** FFA helps its member countries to update their legislative framework. It provides technical assistance to rewrite the legislation if it is outdated or to identify gaps for corrective measures. FFA ensures that the legislative framework is adequate to prosecute infringements made by national or foreign operators and that the penalty scheme is sufficiently high to act as a deterrent. Beside this legal technical assistance, FFA organises training workshops for national law-enforcement officers (like prosecution and dockside boarding workshops).

3. THE FSM POLICY FRAMEWORK

3.1. Institutional arrangements

➤ Inshore fisheries

The development and management of coastal fisheries in FSM out to 12 miles from the shore is the constitutional responsibility of the four state governments. This responsibility encompasses all reef and lagoon fisheries as well as near-shore fisheries for coastal and ocean pelagic species, including tunas. Responsibility for marine resource fisheries development and management activities has been divested to separate agencies in Kosrae, Pohnpei and Yap with a single agency responsible for both management and development in Chuuk.

The FSM national government has the responsibility to provide support to state agencies involved in coastal fisheries development and management efforts. This is done primarily through the Fisheries Section of the Division of Sector Development within the Department of Economic Affairs. The Fisheries Section assists the states in implementing their development and management plans through the provision of technical support and information, facilitation of contacts between state agencies and external organizations, and coordinating the activities of FSM's international development partners in the fisheries sector. The Fisheries Section also retains responsibility for the operation of the National Aquaculture Center in Kosrae State.

In addition to the State and National Government Fisheries and Marine Resource Agencies, various other organizations are involved in coastal resource management. These include environmental agencies, fisheries and economic development authorities, and non-government organizations. Because of the variety of agencies involved in coastal resource management in FSM, coordination of activities and harmonization of goals and objectives is an ongoing challenge.

➤ Oceanic fisheries (e.g. tuna fisheries outside the 12 miles zone)

The FSM law establishes the National Oceanic Resource Management Authority (NORMA) (previously known as the Micronesian Maritime Authority (MMA) and the Micronesian Fisheries Authority (MFA)) as the national agency responsible for the management of oceanic resources from 12 - 200 miles in the FSM economic zone.

The general objective of NORMA is to be "an effective guardian and manager of the marine resources in the Exclusive Economic Zone of the FSM for people living today and for generations of citizens to come". The Authority works to:

- Ensure that these resources are used in a sustainable way
- Obtain the maximum sustainable economic benefits from the resources

- Promote economic security for the nation through their use.

The day to day operations of NORMA consist in preparing fisheries negotiation strategies including compiling statistics and data analysis, administer all foreign and domestic fishing agreements, regional and international agreements and treaties the FSM is party to, provide technical assistance to States, develop policy regarding fisheries and fisheries development in general, and implement policies.

NORMA has a coordination role in the implementation of fisheries monitoring and control activities but active surveillance activity and the operation of patrol boats is carried out by the Maritime Wing of the FSM National Police under the Department of Justice.

3.2. FSM current Fishery Policy

Historically, the process of developing a fisheries policy for the FSM was initiated with the declaration of the FSM EEZ in 1989 and was first articulated in a 1991 study. More detailed analysis was undertaken in 1996 for the consideration of the National Fisheries Summit of FSM in December 1996. The recommendations of the National Summit resulted in the presentation of a first National Fisheries Policy Document.

The National fisheries policy has been constantly updated since, and thoroughly reviewed in the context of the elaboration of a National Strategic Development Plan for the 2004-2023 period based on the results of an Economic Summit organised in 2003 and which associated four hundred participants representing the four FSM states, the traditional leadership, private sector, National and State governments, non-government organizations, government officials, as well as representatives of foreign governments and donor institutions.

The adopted National Fisheries Policy is integrated in the context of the general National Strategic Plan. Taking account of the findings of the situational analysis for the sector and the intent of Economic Summit, the following policy themes were apparent:

For Coastal Fisheries:

- An increasing focus on resource management strategies encompassing traditional practice and protected areas;
- An increasing focus on ensuring resource exploitation is carefully managed and priority access is accorded to subsistence and low level artisanal activities rather than commercial fisheries; An increasing focus on aquaculture activities at the subsistence and artisanal levels;
- An increasing focus on community participation in management;

For Oceanic Fisheries:

- A continued emphasis on improving economic benefits, utilisation of infrastructure and domestic commercial activity;
- In the context of the Tuna Management Plan, a more focused emphasis on resource management and monitoring;
- Acknowledgement of the urgent need to attract investment;

The operational National Fisheries Policy is detailed in a quite impressive 20 page matrix which details for each of the 5 strategic goals adopted the outcomes (incl. quantified measurement indicators), the activities and the outputs expected.

3.3. Budgets in support of the development of the Fisheries Policy

No indications could be obtained on the National budget for implementing the fisheries policy.

In 2009, the operating budget of NORMA was slightly in excess of € 270,000 covering basically the operating expenses of this administration (table below). Investment in the fisheries sector rely on overseas development aid (incl. Compact Grants), as well as on specific budget line from fishing agreements (the US multilateral agreement and the EU fishing agreement which provides for an

earmarked amount of € 100,620 annually for enhancing responsible fishing in FSM). The development budget for all sectors of the economy is administrated by a dedicated State Department and is not part of NORMA budget.

Table 13: 2009 budget of NORMA. Source: FSM Congress

	2009 (USD)	2009 (EUR)
Personnel	201 158	144 718
Travel	60 000	43 165
Contractual services	73 700	53 022
Other current expenses	40 500	29 137
Total	375 358	270 042

During a technical meeting held between FSM and the EU in the margins of the 2009 plenary meeting of the WCPFC in French Polynesia, FSM informed that the 18% of the financial contribution devoted to fishery policy support (i.e. € 100,620 per year) is allocated as follows:

- 10% for industry participation at regional and international meetings
- 25% for stakeholders consultation
- 25% to review internal arrangements for compliance with regional and international conservation and management measures
- 20% for surveillance activities
- 20% for NORMA contribution to regional and international arrangements

3.4. FSM Maritime Policy

We are not aware of an integrated Maritime Policy adopted by FSM. However, FSM, as an archipelagic State with few land area and a large EEZ, has considerable policy needs in the maritime sectors. These needs relate primarily to maritime infrastructure development. The FSM Strategic Development Plan for the 2004-2023 period considered that the FSM maritime sector must be developed to serve adequately international trade, inter-island trade and person movements, the fishing industry, and recreational activities for both FSM residents and visiting tourists. Currently, most of these objectives are not being fully achieved by the maritime sector. Proper maritime infrastructures are needed in particular :

- to provide the facilities necessary to enable market opportunities to be realised for all areas of the country, including labour market opportunities, and to enhance the level of integration of state economies and the national economy.
- to realise the fisheries potential of all four states of the FSM in a manner that ensures sustainability of that sector
- to provide improved dock facilities to meet both fisheries and commercial shipping needs
- to facilitate the provision of modern, safe and efficient inter-state and inter-island passenger and cargo vessels
- to continue to coordinate and facilitate the improvement of aids to navigation

FSM Authorities consider that a total investment of USD 235 million is required over the 2003-2017 period to rehabilitate and develop maritime infrastructures.

The FSM Strategic Development Plan identified other actions requiring institutional reforms, namely seaport development and management; and maritime safety and surveillance including protection of the marine environment. Other needs are identified to strengthen and support the Maritime College (Colonia, Yap) who provide basic training for the FSM seafarers and fishermen (security, engineering, bridge procedures, etc ...).

4. EX-POST EVALUATION OF THE FISHERIES PARTNERSHIP AGREEMENT

4.1. Outline of the Agreement

After being initialled in May 2004, the FPA with FSM entered eventually into force on 26 February 2007. While the duration of the FPA is nine years from this date, the first protocol of agreement covers a period of 3 years, i.e. until 25 February 2010.

The Protocol includes fishing authorisations for up to 6 purse seiners and up to 12 surface longliners.

The EU single financial contribution of € 559,000 per year is based on a reference tonnage of 8,600 tonnes valued € 65 per tonne. If case EU licensed tuna vessels catch tuna in excess of this reference tonnage, the EU contribution is increased by € 65 per additional tonne of tuna caught. The reference tonnage is not to be understood as a catch limit, but as a threshold beyond which the EU contribution is increased. In case the EU tuna fishing vessels catch less than 8,600 tonnes, the EU pays € 559,000 anyway. The agreement with FMS having been initialled before the adoption of Council conclusion on the future of fishing agreements in July 2004, the financial contribution is based only on fishing rights obtained and does not include an additional envelope for the support and implementation of National sectoral fisheries policy.

Out of the total single financial contribution paid by the EU, the protocol foresees that 18% (i.e. € 100,620) shall be put towards the objectives of a mutually agreed multiannual programme aiming at introducing over time responsible fishing practices and sustainable fisheries. FSM must notify to the EU the allocation of these 18%. In case the annual evaluation of the progress made in implementing the annual work programme so warrants, the 18% share of the financial contribution may be reduced.

The protocol of agreement considered a possible increase of EU purse seine fishing capacity from the second year of application of the protocol should the resource and prevailing international arrangement permit. In that case, the EU contribution is increased by € 65,000 per year.

Concerning payments from participating EU fishing companies, each purse seiner has to pay a licence fee of € 15,000 per year equivalent to the fees due for 428 tonnes of tuna species caught by year. In case this catch level is exceeded, the licence fee is increased by € 35 for each additional tonne caught. As for surface longliners, the licence fee is € 4,200 equivalent for the fees due for 120 tonnes of tuna species caught by year. Any additional tonne caught in excess of this reference level increase the licence fee by € 35 per tonne. The scientific institutes of the Member States are responsible for verifying the catch data submitted by the EU vessels.

In addition, EU shipowners have to pay a licence application fee worth € 250 plus a contribution of € 500 towards the FSM [Fisheries] Observer fund.

As regards conditions governing fishing activities by Community vessels in the EEZ of FSM, EU purse seiners and surface longliners are prohibited from fishing in the territorial waters (12 miles from baselines) and within 2 miles radius of any anchored FAD belonging to FSM interests. Each EU fishing vessels is required to send its positions through a satellite VMS system as defined by the FFA VMS scheme, and to report its catches on a regular basis. FSM observers shall be taken onboard on request from FSM Authority. Finally, the protocol considers that each EU vessel shall undertake to employ at least one FSM National as crew member. In case no FSM National is employed, the EU shipowners shall pay to FSM Authorities a lump sum equivalent to the wages of two crew members for the duration of the fishing season in the FSM EEZ.

4.2. Utilisation of the fishing possibilities negotiated

None of the fishing possibilities negotiated with FSM have been utilised.

Upon entry into force of the agreement in February 2007 and over 2008, 4 EU purse seine operators (out of 6 possible) submitted their licence applications to FSM including the corresponding payments of € 15,000 per vessel plus other side financial contributions (application fee and contribution to observer fund). Contrary to the Agreement, FSM never accepted the applications and as a consequence, no EU purse seiners has been authorised to fish in the FSM EEZ during the first year of the agreement.

EU surface longliners never attempted to use the fishing possibilities negotiated (no license applications). This lack of interest is linked to the fishing strategy adopted which target swordfish in cooler waters of the Western Central Pacific area (see Figure 13 page 34).

Consequently, the utilisation of the fishing possibilities negotiated is zero for any of the three years of the current Agreement: zero for the number of EU fishing vessels having operated in the FSM EEZ and *de facto* zero for the catch made in the FSM EEZ.

The European Commission and FSM actively sought to resolve this singular situation. According to the notes consulted, it appears that an unexpected delay in the payment of the EU financial contribution is the starting point of the problem. Due for the first year no later than three months after the entry into force of the Agreement (i.e. May 2007), the initial payment eventually reached FSM considerably later in October 2008. This delay was caused by the first instalment being rejected (the Bank account communicated by FSM was in USD only) and the subsequent procedures for FSM to open an € bank account and for the EU to reinitiate the payment procedure. According to FSM, the reason for withholding the issuance of licenses is the outstanding annual payment, although from the Commission perspective, the issues of payments of the financial contribution and the issuance of licences are not linked. However, by the end of 2008, all financial issues were settled with the EU financial contribution and licence fees from EU shipowners both credited on FSM designated Bank accounts. Nonetheless, FSM obligation to issue the licences has still not been complied with. On that ground, the EU withheld the payment of the second tranche of the EU financial compensation due in Feb. 2008 and the next due in Feb. 2009.

On balance, the EU has paid so far one year financial contribution (€ 559,000) and the EU shipowners 4 licence applications worth € 15,000 each plus ancillary observer contributions for no return whatsoever.

This apparently purely financial problem is probably compounded by FSM internal political problems. After having approved the Agreement with the EU in January 2007 (Res. 14-114), the FSM Congress³⁰ adopted a resolution in February 2009 (Res. 15-197) urging the State Authorities to review or even terminate the Agreement stating that *“upon further review it is the sense of Congress that certain provisions of the Agreement, including but not limited to the lack of a ceiling on tonnage of fish caught and the amount paid for access to the Exclusive Economic Zone (EEZ), may not be in the best interest of the FSM”*. The rationale for adopting this resolution is not clear as none of the other agreements consulted (with Japan and Taiwan for the same vessel categories but with considerable higher number of licences) considers a catch limit.

4.3. Socio-economic impacts the current protocol

Since the EU fishing vessels could never obtain a licence to fish tuna species in the EEZ of FSM, the direct socio-economic impacts of the fisheries agreement with FSM are nil.

Projecting further, the socio-economic impacts of this agreement can even be estimated to have been negative for the EU fisheries sector. Although they paid at least € 15,000 + for each of the four purse seiners potentially concerned, the EU purse seiner owners could never obtain an access to the FSM EEZ. As a consequence they had to review and adapt their fishing strategy to take into account the impossibility of fishing in one of the most productive area of the WCP area. This situation was probably not too detrimental in 2007 when EU fishing activities took place mostly in the Central Pacific area

³⁰ Similar to the US Governance framework, the Congress is the legislative branch of the National Government. The executive branch is the President Office and its State Departments.

around Kiribati, but probably more sensible in 2008 when the prevailing environmental conditions (La Niña episode) forced the EU fishing activities to extend westward with first catches ever recorded in the Solomon Islands EEZ (although at a modest level). Information on fishing for 2009 is not yet available.

Moreover, the existence of a FPA blocked any legal possibility for EU the purse seine fleet to negotiate a private access to the FSM EEZ, as it could have been the case if there were no agreements in force (examples in the region of Tuvalu and Nauru).

Concerning the EU surface longline fleet, the FSM agreement would have had no impact anyway as the vessels exploit primarily the temperate waters of the Southern latitudes of the WCP, saying away from the tropical area.

4.4. The Partnership approach

The Fisheries Partnership Agreement signed between FSM and the EU and its associated Protocol integrates the partnership approach promoted by the Commission since the 2004 Council conclusion on COM (2002) 635 and now fully implemented throughout all fisheries agreement currently in force. In short, partnership means that the two parties agree on a multiannual programme with a view to defining and implementing a fishery policy promoting responsible fishing practices³¹. According to the agreement, FSM undertake to allocate 18% of the financial compensation (i.e. € 100,620 annually) with a view to implementing the multiannual programme agreed upon.

Based on the Protocol clauses, the multiannual programme was to be discussed and agreed upon within the first meeting of the Joint Committee to be held no later than three months after the entry in force of the agreement (i.e. 26 February 2007). The implementation of the fisheries policy support programme was to be reviewed by the Joint Committee which is scheduled to meet at least once a year. FSM were to notify the Community of the financial allocation each year also.

During the first three years of the agreement, none of these clauses have been complied with. The Joint Committee never met, and as a result, there has been neither mutually agreed multiannual programme nor fishery policy dialogue between the two parties. The Community has not received notification of the utilisation of the financial allocation devoted to fishery policy support except orally during a technical meeting held in the margin of the 2009 WCPFC plenary meeting.

According to Commission's services, the non-compliance with the partnership agreement clauses is attributable to difficulties to establish contact with FSM authorities, compounded by the remoteness of the country from Europe. In addition, the issues linked to delayed payment of the financial contribution and the non-issuance of licences appeared to have fully occupy the limited space available for dialogue.

Note that the partnership aspects of the fishing agreements with Pacific Islands are totally centrally managed from Brussels by DG MARE. Unlike other regions (North Africa, West Africa, Indian Ocean), there is no dedicated decentralised Commission's staff assigned to the monitoring of ongoing fishing agreements in the Pacific.

The foregoing does not mean that there has been no contact between the Community and FSM under the agreement. However, they have been minimal and took place outside the framework of the Joint Committee which constitute, as per the Partnership Agreement, the only official platform for discussions between the two partners on any issue linked to the implementation of the FPA.

In summary, it may be concluded that the partnership component of the fishing agreement has been virtually inexistent. It occurs also that the partnership with the other Pacific Islands having signed a fishing agreement with the EU (Solomon Islands, Kiribati) is on the same low level. This is obviously a

³¹ Based on experience from other fisheries partnership agreements, this includes measures related to fight against IUU fishing, support to scientific research and reduction of the impacts of fishing on the environment. The partnership includes also strengthening of sanitary control of fisheries products exported and promotion of European investment in the partner country.

missed opportunity to strengthen fishery policy of the partner country, noting however that the regional initiatives funded under the successive EDFs appear to have a strong positive impact on fisheries development in the region. Incidentally, the absence of sectoral partnership dialogue under the Pacific FPAs can be a detrimental example for partner countries in other part of the world (West Africa, Indian Ocean) under FPA with the EU who strive to implement multiannual programmes according to Protocol clauses, often under the threat of reduced payments in case they do not achieve the objectives set.

4.5. Main lessons learnt from the ex-post evaluation

As for all Community fisheries agreements, the investment of the EU in a fisheries partnership agreement with FSM was expected to contribute to the following objectives, which are common to all other fisheries partnership agreements concluded by the Community:

- a) safeguarding employment in the regions of the Community dependent on fishing;
- b) securing the continued existence and competitiveness of the Community's fisheries sector;
- c) developing, through partnership, the fisheries resource management and control capacities of third countries to ensure sustainable fishing and promoting the economic development of the fisheries sector in those countries by improving the scientific and technical evaluation of the fisheries concerned, monitoring and control of fishing activities, health conditions and the business environment in the sector;
- d) ensuring adequate supply for the Community market.

As a consequence of the evaluations developed in the foregoing sections, none of these objectives have been reached.

Nonetheless, it could be expected that concerning objectives a) and d), the agreement with FSM would have had overall a negligible contribution to Community objectives. The main reason is that the Community fleet concerned by this agreement numbers only potentially 6 purse seiners and 12 surface longliners, of which only 4 purse seiners have requested fishing licences to access the FSM EEZ. The recent overall evaluation study of all Community fishing agreements demonstrated that the whole of the Community fleet using fishing possibilities negotiated under all fishing agreements represents only a small percentage of all Community fleet outputs (in terms of production, turnover, value-added, employment and supply to the market). No major contribution could be expected from an agreement that represents 0.5% of all EU financial commitments to third countries under Fisheries Partnership Agreements.

Concerning objective b), the fisheries partnership agreement could have been useful to secure access of EU tuna purse seiners to one of the most productive tuna fishing ground in the Western Central Pacific. The resource targeted is highly migratory and its movements are largely driven by oceanographic conditions. Fishing vessels must be able to follow the resources wherever it is present, i.e. in the high seas as well as in the waters under jurisdiction of Coastal States, and therefore have an access to all key EEZs. The access to FSM waters could have proved useful in 2008/2009 when La Niña conditions prevailed over the Pacific Ocean, meaning that fish tended to concentrate in the Western waters. Under El Niño episode, fish migrate in the Central/Eastern part of the Pacific Ocean and is less abundant in Western waters, including in the FSM EEZ. Therefore, the current network of EU fishing agreements in the Pacific is adequate to support the deployment strategy of the EU purse seine fleet, noting however that an extension of this network to other PNA countries (such as Tuvalu, Nauru, Papua New Guinea or Marshall Islands) would further complement and secure the fishing possibilities that the EU purse seine fleet could use in the sub-region.

Concerning objective c), the result is disappointing. The EU and FSM could never start the sectoral dialogue with a view to promoting responsible fishing practices and to fostering EU investment as anticipated by the agreement. Consequently, the EU has had no influence on fishery policy

developments in FSM through the partnership³². However, several facts mitigate the consequences of this failed partnership. Firstly, the modest EU contribution to fishery policy development (€ 100,620) could not be expected to be pivotal. Other donors (USA, Japan and China) have most probably a much more influential role in the natural resource sector. Secondly, other sources of EU funding could be used to satisfy the fisheries development needs of FSM including the successive regional Pacific EDF programmes that have been used to improve scientific advice, strengthen data collection procedures, foster the development Pacific Islands economies or combat IUU fishing. FSM which are part of a region and of a sub-grouping of countries (the PNA) where fisheries management strategy is highly integrated could benefit from the EU regional cooperation strategy focusing on management of natural resource and expected to continue over the duration of the 10th EDF.

Finally, concerning protocol conditions governing fishing activities by Community vessels in the FSM fishing zone, it could be noted that they are broadly similar to conditions imposed by FSM to other Distant-Water fishing nations (closed area, reporting, observers). The rules imposed by FSM are based on WCPCF conservation and management measures and on specific management measures jointly adopted by the PNA for fishing in their EEZ. The only major difference is the inclusion of an incitation to embark National seamen onboard fishing vessels in the protocol signed by the EU which is not part of the agreements signed by FSM with other Distant-Water Fishing Nations that could be consulted.

4.6. Recommendations for the future

4.6.1. Compensating for the non-execution of the 2007-2010 Agreement

It will be necessary for the two parties to consider possible solutions to settle the outstanding financial and technical issues linked to the current protocol of agreement. The Community paid to FSM the equivalent of one year of financial contribution (€ 559,000) in 2008 and the EU shipowners the equivalent of one year licences fees for 4 purse seiners. Still, FSM did not comply with its legal obligation of issuing the fishing licences to the applicant EU purse seiners. This is clearly not acceptable and the amounts transferred by both the Community and the EU shipowners to FSM should be recovered in a way or another.

In 2008, the Commission informally proposed to FSM to extend the validity of the current protocol by one year up to 25 Feb. 2011 without any other modification to the terms and conditions associated with the Agreement and its protocol (i.e. doing as if the agreement actually started one year after its entry into force). This solution was not taken up by FSM. Now, in early 2010, this type of compensating solution appears difficult to consider.

In the event a new agreement is concluded, it will be probably possible to balance out the outstanding debt of FSM towards the EU and the EU shipowners from the new financial arrangement concluded. Alternatively, the EU may start an official recovery procedure of the public funds transferred to FSM to recover the public funding (by deducting the amounts paid from the EDF envelope for example), but EU shipowners will have little possibilities to recover the licence fees and side payments already made.

4.6.2. Interest in continuation of the current agreement

From the perspective of the European tuna purse seiner operators, there is an interest to keep an access to the EEZ of FSM as part of a sub-regional network of fisheries agreements. Although the EU purse seiners currently exploits mostly the waters under jurisdiction of Kiribati as a continuum of their fishing strategy in the Eastern Pacific Ocean, the availability of an access to the EEZ of FSM can

³² Note however that the EU and FSM are two of the 25 members of WCPCF (plus 7 participating territories plus 7 cooperating non-members) so can be deemed to cooperate for the management and conservation of highly migratory species in the Western Central Pacific within the global forum of all parties to WCPCF. However, this does not replace the partnership agreements and its agreed rules as foreseen in the protocol.

prove useful when fish concentrates in the Western waters under particular oceanographic conditions. In addition, the following factors compound the interest of an access to the EEZ of FSM:

- The conservation and management measures adopted by IATTC in the EPO will lead to decrease fishing opportunities in the Eastern Atlantic (seasonal closures) for all the purse seine fleets. EU purse seiners will have therefore to develop alternative deployment strategies in the WCP area to preserve their economic viability.
- The fishing rights in the high-seas of the WCP attributable to the EU purse seine fleet are low. According to CMM 2008-01, the EU purse seine fleets should limit its fishing effort. The alternative is to spend more fishing days in the EEZ of Coastal States under the framework of the VDS adopted by the PNA. Additionally, some high-seas pockets are subject to seasonal closures and FAD restrictions are unilaterally imposed by PNA countries as part of their access conditions.
- The price of fuel, which can represent up to 25% / 30% of the turnover of a purse seiner, is likely to hike again in the near future. The consequence is that EU fishing vessels will have to base their operations close to the fishing grounds to avoid costly steaming time. Consequently, if the resource concentrates in western waters of the WCP area under certain environmental conditions, vessel's profitability will be improved if the fleet can access the EEZ of FSM, fish and unload there instead of having to steam back to the central part of the WCP.

Concerning EU surface longliners, it appears that there is no interest to keep access possibilities in the waters of FSM. After conducting experimental fishing in tropical waters over 2004 / 2005, the EU longliners resumed operations in the southern latitudes where the target species (swordfish) is more abundant. There are currently no EU surface longliners on the FFA list of registered vessel in good standing meaning that none of these vessels can obtain a fishing licence in any of the EEZ of FFA member countries. Should there be an interest from the EU longline fleet to access one of the EEZ of the PIC, it is likely that the FFA registration procedures would have been completed adequately. This will be a priority for Spain who requires 13 surface longliner licences in the EEZ of FSM (there is no Spanish longliner on the FFA list of vessels in good standings as of March 2010).

At EU Member States level, only Spain has an interest in keeping an access to the FSM EEZ for its vessels. The other Member States that flag tuna purse seiners or surface longliners have currently no such vessels in operations neither in the WCP area nor in the EPO area, and do not anticipate a need in the foreseeable future³³.

From the perspective of the European Community, there is also an interest to maintain a relationship in the fisheries sector with FSM:

- In 2006, the European Community adopted a new strategy for strengthening the partnership with Pacific Islands, including *inter alia* more focused development action on sustainable management of natural resources. This priority is taken up by Regional EDF programmes which allocate substantial funding to programmes aiming at supporting regional integration of fishery management, developing shore industries and promoting responsible fishing practices (robust scientific advice, fight against IUU fishing). A Fisheries Partnership Agreement with FSM can underpin this strategy by providing additional support for the implementation of a National Fishery Policy which would complement EDF regional initiatives.
- The Green Paper on the reform of the Common Fishery Policy³⁴ emphasises that the introduction of regional forms of cooperation should be explored as a mean to better achieve sustainability beyond EU waters. Given the high degree of transnational integration of fishery management promoted by the 8 Pacific countries parties to the Nauru Agreement (incl. FSM), which went as far as creating a PNA secretariat separate from FFA for regulating fisheries, the European Community will probably find an unique opportunity to conclude some kind of regional arrangement in line with the ideas promoted in the Green Paper. While it may take some time to negotiate a form of regional fisheries partnership agreement, the Community has an interest to prolong its current relationships with FSM to prepare for this major change.
- Finally, it is part of the EU strategy to strengthen the framework of RFMOs as a mean to promote fishery governance. The WCPFC, to which the EU is a contracting party, has been so

³³ France was granted 25% of purse seine licence possibility under the current protocol but never used it

³⁴ COM(2009) 163 adopted by the Commission on 22.4.2009

far arguably unable to introduce any measures to effectively reduce fishing mortality on key tuna stocks³⁵, but the 2008 meeting of the Commission showed that PNA countries have considerable leverage to ensure that the WCPFC introduce compatible measures in the areas of international waters. A Fisheries Partnership with FSM and other PNA countries would contribute to ensure that the EU can be associated with PNA initiatives and complement their actions to strengthen the WCPFC conservation and management framework. Additionally, the EU will have a higher profile in WCPFC if the activities of its fleets are managed by public and transparent agreements.

Seen from the outside, FSM could have an economic interest to conclude a new Fisheries Partnership Agreement with the EU. The country has insufficient autonomous budget resources, and a guaranteed income over at least a three year period from a Fisheries Partnership Agreement will provide part of the needs of the country, although modest compared to the USD 15 million + already collected as access fees from other DWFN. The country cannot expect more direct socio-economic benefits from a FPA since it has no tuna processing industry, no access to the EU market for fisheries products and little workforce to propose to foreign fishing vessel operators.

At political level, FSM could have an interest to join forces with the EU for implementing a responsible fisheries policy as the Community clearly took a world leadership in the fight against IUU fishing. Certain items of the FSM National Fisheries Policy such as promotion of foreign investments also match EU objectives under the fishing agreement policy. The country has also considerable needs in the maritime sector.

However, the recent resolution 15-197 of the FSM Congress (see page 47) casts doubts on the political willingness of FSM to continue the agreement with the EU on reasonable terms.

4.6.3. What duration ?

Should negotiations end up on a positive outcome, the Commission intends to renew the agreement for a minimum of three year, i.e. until Feb 2013.

The Fisheries Partnership Agreement with Kiribati ends in September 2012. The current protocol under the Fisheries Partnership Agreement with Solomon Islands ends in October 2012 (pending formal approval by the Council).

If the medium term objective of the EU is to conclude some sort of regional agreement with the PNA countries in line with the ideas promoted in the Green Paper, the Fisheries Partnership Agreement with FSM could be effectively renewed for a period of 3 years to lapse until February 2013. Assuming it will be possible to prolong the Kiribati and Solomon Islands agreements for a few months by simple exchange of letters, this would give to the Community approximately three years to prepare and conclude a regional agreement that would start early 2013, which seems realistic.

Alternatively, the agreement could be prolonged for a longer period of time (i.e. 5 years) with a clause allowing earlier termination in case of conclusion of a regional agreement to which FSM would be party.

4.6.4. What fishing capacity ?

A new protocol should include fishing opportunities for tuna purse seiners and possibly for longliners if Spain request is confirmed. Whilst a realistic capacity of 4 purse seiners is recommended, the next protocol may include flexibility to introduce capacities up to Spain request (5 purse seiners and 13 longliners), noting that this capacity level is compatible with current EU capacity allocation as per WCPFC.

³⁵ See for example Langley & al. - 2009 - Slow Steps Towards Management of the World's Largest Tuna Fishery. Marine Policy 33, pp 271-279

According to the third Implementing Arrangement of the Palau Agreement (in particular the introduction of the VDS scheme) applying to purse seiners, the EU and FSM could agree on a maximum number of days the EU purse seiners could fish in the FSM EEZ, bearing in mind that each fishing day of a European purse seiner is counted one and a half days for VDS purpose (i.e. negotiating 225 fishing days in the FSM EEZ according to VDS gives in effect 150 fishing days to the EU purse seine fleet³⁶).

Should the principle of a day envelope be retained for purse seiners, it would be also appropriate to set an upper limit to the number of such vessels allowed under the agreement to avoid unnecessary competition between EU operators for access and to properly manage the fleet. On the basis of the current and historic number of EU purse seiners operating in this region (validated by the number of prospective applicants for an access to the FSM EEZ), the maximum number should be 4 purse seiners, with possibility to increase the number of licences, providing FSM remain within the limits of its PNA fishing day allocation. However, Spain requests access possibilities for 5 purse seiners.

4.6.5. What conditions governing fishing activities by EU vessels in the waters of FSM ?

The main conditions listed in the Annex to the current protocol should remain the same, in particular the exclusion from FSM inshore waters, the compulsory distance from FADs, financial participation to the Observer Funds, the reporting and licensing arrangements.

FSM and the EU may consider removing the clause on embarkation of FSM seamen. Lessons from other agreement prove that this type of constraint never work on tuna vessels which hardly know in advance in what port the current fishing trip will end. Failure to comply with this clause and determination of compensatory payments often gives rise to controversy and increase the administrative burden for both parties. If FSM seamen present some competitive advantages in terms of skills or salaries compared to crewmen from other third countries, the EU shipowners will naturally recruit them onboard their vessels.

More importantly, a next protocol may include the application to the EU fleet of the recently agreed measures by the Parties to the Nauru Agreement (such as high seas pockets³⁷ closure, periodic FAD bans, 100% observer coverage and catch retention) under the 3rd implementing arrangement. The next protocol should make specific reference to these measures or simply state that additional conservation and management measures agreed by PNA should be adhered to. The financial contribution of EU shipowners to the Observer Funds should be revised upward to account for the new coverage requirements imposed by both PNA countries and the WCPFC.

³⁶ The number of days considered here and in the next sections is purely a working assumption. It does not necessarily reflect neither the needs of the European fleet nor a vessel-day envelope FSM may decide to allocate to the EU fleet.

³⁷ Note that the high-seas pockets closure imposed by PNA as part of their licensing conditions is currently challenged by operators of some Distant Water Fishing Nations (incl. Spain) on the ground that Coastal States have no rights to impose conditions applying in the high-seas. However, a legal expertise conducted by FFA confirms the opposite.

CONCLUSION

The first period of application of the FPA with FSM failed overall to achieve its objectives. This is primarily the consequence of the non-execution by FSM of its very basic obligation of issuing fishing licences to applicant EU tuna vessels. Although the small size of the European fishing fleet concerned was not expected to bring a significant contribution to the European fisheries sector as a whole, the main interest of the Fisheries Partnership Agreement was to provide a framework for a political dialogue on fisheries issues and for support to the implementation of the National Fisheries Policy which is fully integrated in FSM strategic planning to achieve economic growth and self-reliance and counter the effects of reduced assistance from the US under the Compact of Free Association.

Nonetheless, it is estimated that both parties have an interest to conclude a new protocol of Agreement. For the European Community, the main interest would be to keep a framework for a political dialogue in fisheries with FSM as well as with Kiribati and Solomon Islands under the other ongoing partnership agreements with a view to preparing a more ambitious regional agreement with the PNA countries. Given the high sub-regional level of integration of fisheries management policies, there are probably no best place in the world where the EU could implement and test the regional approach considered in the Green Paper on the reform of the Common Fishery Policy. For FSM, the main interest is to keep a National budget income and to maintain a diversification of its fishing foreign partners.

The main recommendation stemming from this ex-post evaluation is very similar to the case of the recently evaluated fishing agreement with Solomon Islands: the European Commission must show more involvement in the management of the Pacific agreements. As it is clearly demonstrated by other fishing partnership agreements in other regions of the world (West Africa, Indian Ocean), the proper and smooth implementation of the partnership needs a leading party, which is most often if not always the European party. For this reason, managing these Pacific agreements centrally from Brussels is not a viable solution. The distance between the Pacific and Europe (a 5 day journey) is in itself the mere reason why the EU should strongly consider having a dedicated staff stationed in the Delegation of Fiji or Papua New Guinea to monitor and implement the all provisions of the Fisheries Partnership Agreements with Pacific Islands, as it is the case in Morocco, Mauritania, West Africa and in the Indian Ocean. One could arguably object that the financial importance of Pacific Agreement is minor (principle of proportionality) compared to all EU commitments under fishing agreements (less than 1%) but there is no reasons for the EU not to comply with its partnership commitments.

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